

UNITED STATES DEPARTMENT OF ENERGY
WORKER ADVOCACY ADVISORY COMMITTEE
PUBLIC MEETING

Loews L'Enfant Plaza Hotel
 Washington, D.C.

Wednesday, June 19, 2002
 8:30 a.m.

Attendees

EMILY SPIELER, Chair
 West Virginia University

RICKY BLEA
 Department of Labor

JOHN F. BURTON, JR.
 Rutgers University

JEANNE CISCO
 Portsmouth Uranium Enrichment Plant

DONALD ELISBURG, ESQ.

KATHRYN MUELLER
 State of Colorado

IRIS POST
 State of Iowa

GREGORY WAGNER
 National Institute for Occupational Safety
 and Health

LAURA S. WELCH
 The Washington Hospital Center

LEN MARTINEZ
 Kaiser-Hill Company, LLC

LESLIE I. BODEN
 Boston University

BEVERLY COOK, Assistant Secretary
 Environment, Safety and Health

EXECUTIVE COURT REPORTERS, INC.
(301) 565-0064

Attendees (Continued)

CLAUDIA GANGI
Department of Justice

JOSH SILVERMAN
Office of Worker Advocacy

KATE KIMPAN
Office of Worker Advocacy

ROBERTA MOSIER
Department of Labor

A G E N D A

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P R O C E E D I N G S

8:30 a.m.

Opening Remarks

MS. SPIELER: This is a continuation of the meeting of the Workers Advocacy Advisory Committee for the Advisory Committee to the Department of Energy, and I believe the same committee members are present in the room.

Do we have anyone on the phone today? Did someone just connect up?

MS. MUELLER: Hi. This is Kathryn.

MS. SPIELER: Hi, Kathryn. Okay. I have a couple of announcements. First of all, the current theory about the crackling on the sound is that it is caused by cell phones in the room, and so there's been a request made by DOE staff to turn off your cell phones. I'll give you all a minute to reach into your pockets.

Second of all, there's going to be apparently a testing of the fire alarm sound system in the hotel at 9:00 for five minutes, and we don't have to leave, but I doubt we'll be able to continue our discussions for that five minutes. So, we'll just take a five-minute meditative break. No. I was thinking, well, unless you're very advanced in your meditation

1 practices.

2 I would ask that the people who were not
3 present in the room yesterday identify yourselves and
4 any affiliation that you may have, please, and Judy, if
5 you could give them the mike?

6 MS. GRANT: My name is Cathy Grant, and I'm a
7 nurse case manager, and I'm here at the OWA at L'Enfant
8 and hand it over to my associate here.

9 MS. CATANSARI: I'm Anne Catansari. I'm also
10 a nurse case manager with the OWA.

11 MS. SPIELER: I think everyone else was here
12 yesterday. Thank you very much.

13 Subcommittee Topics

14 MS. SPIELER: I was asked by the committee
15 members to start us out by talking a little bit about
16 where I think the issues are for our discussion and now
17 that Cookie's here, maybe she could pull up a chair to
18 the table so that -- and I actually ended up thinking
19 about this in terms of what we're calling payer and
20 non-payer claims in a grid, and we'd like to make a
21 proposal about how we think about this, but first, let
22 me go through the issues that I think we might want to
23 discuss or at least issues that have come up that are
24 matters of concern, and I've organized these by the
25 five existing kind of umbrellas of the subcommittees in

1 terms of the way we think about this.

2 So, I'm going kind of by the list, the way
3 that's organized, although I'm not sure this is the
4 order in which we want to talk about it, and Bev, your
5 -- we'd actually like you to sort of chime in on this.

6 First of all, there's the whole question of
7 how claims are processed and administered and I'm
8 really delighted that the case managers are here from
9 the OWA Office. From the point of intake, DOL
10 interface, how the research on employment and exposure
11 history, referral to the physician panel, development
12 of medical evidence, processing through the physician
13 panel, filing of claims, state worker compensation
14 claims, and the issue in particular which was raised by
15 a number of committee members during the day yesterday
16 and also after the meeting as to the concern about the
17 idea that there might be some form of one-stop shopping
18 for people who would be making DOL and Subtitle D
19 claims and concern about whether that was actually
20 helping -- occurring, and the whole question of whether
21 an ombudsman is needed in this system.

22 Those concerns, I think, apply to whoever the
23 payer on a claim is and are kind of universal. In
24 addition, for any claims in which there is not an
25 identified payer, there would be the whole question of

1 the development for state litigation and how that would
2 be done.

3 In the area of contractor/insurer
4 relationships, if there's an existing contractor, I
5 think there are still a number of issues about payment
6 methodologies. Does the contractor take care of it?
7 What's the nature of the procurement relationship with
8 DOE and the issues there? Ought there to be some
9 consideration of the TPA for existing contractors? Are
10 there any insurer issues, even in this scenario, where
11 there are current contractors and presumed payers? And
12 then, of course, if there aren't -- there isn't a
13 current contractor, how do we deal with the
14 contractor/insurer relation issues? John, I think we
15 need to talk about that a little bit.

16 In the third sort of area of the whole
17 question of state agency relations, if there's an
18 existing payer and the payer accepts the claims, what
19 is the simplest and most efficient way to process them?
20 And to what extent does that require state agency
21 involvement, and how can that best be expedited?

22 If there's not a payer that's going to accept
23 responsibility for the claim, then there are a whole
24 variety of issues about what can be raised within the
25 state context and the extent to which DOE can be of

1 assistance.

2 With regard to physician issues, both
3 causation issues and physician panel issues and medical
4 evaluation issues, I think it would be reassuring for
5 the committee to hear this again, that the DOE has
6 committed to a single uniform standard on the causation
7 issue. That still leaves the question of the
8 development of medical evidence that the physician
9 panel may need and whether there's going to be
10 assistance to claimants by DOE in that process.

11 It also leaves out the question of how
12 partial disability evaluations are going to be done, by
13 whom, how they're going to be administered and how
14 resolutions are going to be reached if there's any kind
15 of dispute.

16 Finally, there's the whole question of
17 performance evaluation, and what kind of data are being
18 kept initially and how that's being reviewed, and in
19 that area, I think this committee has an enormous
20 amount of expertise and can be of great assistance.

21 What I was actually going to suggest, but
22 it's entirely up to Bev, you and the other members of
23 the committee, is that we actually focus initially on
24 those claims in which there is going to be a payer.
25 Assume for the initial round of discussion that there

1 will be an available payer for all claims, and how
2 should the process look for those claims?

3 And then, I think perhaps revisit the
4 question of if that isn't going to be true since I
5 think that that will be an issue that will also be
6 being resolved in Congress over the next few weeks, if
7 that isn't going to be true, what are the issues that
8 the Department really needs to start looking at in
9 terms of the claims where there isn't an immediate
10 available contract with the contractor where you can
11 order immediate payment.

12 First of all, from the committee members, is
13 there anything that I missed?

14 (No response)

15 MS. SPIELER: And second, anything you can
16 think of?

17 MS. COOK: Yeah. I took a few notes. One
18 is, the first thing is, this is a good list of the
19 challenges. I'm sure it's not comprehensive. I think
20 we're going to get into this and find that every time,
21 there is something we haven't thought through.

22 So, what it appears to me you're talking
23 about which would be of great value to us is really
24 scenario planning. Let's pick the scenario that looks
25 easiest for us to start with and see if we can sort

1 through what the challenges are with that.

2 Mostly because what we're trying to do right
3 now is to put together our procedures on how we move
4 through this. We want to have it so it's just, you
5 know, we work through, we move through, we keep going,
6 and I don't want to have to stop every couple steps and
7 say, oh, we didn't think through this, we didn't think
8 through that.

9 So, my staff here has tried to think through
10 most of this, and we have started having regular
11 meetings with everybody involved in the different
12 aspects of this office because there are kind of
13 channels in looking at certain aspects of it and
14 pulling it together so that we make sure that everyone
15 understands what each other's perspective is on this,
16 so we can do that kind of scenario planning and make
17 sure that we've covered all the bases, but I believe
18 that there are areas that we've missed and there are
19 areas, as much as we all -- this group and all of us
20 together can think of other areas we've missed.

21 So, whatever we can do to get to the best
22 set-up, at least trying to identify challenges and
23 hopefully we've put together ways to sort of look
24 through those. At least that gives us a good start.

25 Single uniform standard. Yes, that's what

1 we're looking at. That's what we're hoping to get to
2 at the end. You know, I can't guarantee you when
3 everybody else gets to touch it, that's where it ends
4 up, but that's certainly what our intent is.

5 Assistance to claimants. That's still something
6 we struggle with. We've got lots of ways to assist
7 them now. That's again a scenario planning issue. I
8 want to do everything possible to help people through
9 that, but there is a point where, you know, a
10 reasonable person has to say that's far enough, you
11 know, and how do you decide that? How do you tell
12 someone, look, we've helped you get through all the
13 medical care that you can and you've had good people
14 looking at your issue, you know, we can't go any
15 farther than that? How do you do that? That's
16 something for people with experience in the medical
17 community that need to help me with, and how do you
18 help people understand where there's some closure for
19 them. I think closure's a big issue.

20 Partial disability. That's one of those
21 things that we have to think about in scenario planning
22 because it's going to be a variety.

23 MS. SPIELER: Maybe it would be more helpful
24 to actually just start and have a committee discussion
25 from the top of the list about these issues.

1 MS. COOK: I think that would be.

2 MS. SPIELER: But I was going to ask first,
3 -- Bev, if you could hit your mike for a second. I was
4 going to ask first, how the committee members felt
5 about running through the scenario in terms of assuming
6 a payer and sort of running through the entire scenario
7 process and then going back and looking at the question
8 of, well, we have some set of claims where this might
9 not be true. What are the alterations or things that
10 the Department needs to be thinking about?

11 Any problem with that?

12 (No response)

13 MS. SPIELER: Okay. So, Bev, why don't we do
14 it this way rather than sort of going through the list
15 quickly? Why don't we start it at the top of the list
16 of suggestions and really try to explore in greater
17 detail, to the extent that you can tell us, you know,
18 sort of where you are in these issues and see whether
19 there are specific concerns, questions, or suggestions
20 that committee members have around each of these
21 issues? If that's okay with you?

22 MS. COOK: I'm not sure that -- I'd have to
23 start pulling everybody up. Okay. What do we do with
24 this? What have you thought about that? I'm not sure
25 that we're there so much as having you walk through --

1 having you all walk through, okay, someone comes in.
2 This is what we'd expect to happen and this is what we
3 expect to happen and maybe we can respond to, okay, we
4 think we're going there, we missed this, we haven't
5 thought about that part yet.

6 MR. ELISBURG: I have a thought about it. Is
7 there some way, if we're going to do some of this this
8 morning, that maybe whoever in your operation is the
9 operations person can walk us through a claim? I'm a
10 claimant, and I'm showing up at a resource center.
11 What's going to happen when I walk in?

12 MS. COOK: We -- yeah. We can take a shot at
13 it. I guess I think there are things we haven't
14 thought through yet.

15 MR. WAGNER: Have you actually defined, laid
16 out, written up your operating procedures?

17 MS. GANGI: We are in the process of putting
18 together all the procedures that will follow the case
19 from the point that it is -- that a person expresses
20 interest until it comes out of the physician panel and
21 goes to -- back to the worker. Those defined
22 procedures should be in place by July 1st.

23 This afternoon, you'd expressed interest in
24 coming up to talk to us. We were going to walk through
25 the procedures. The written procedures are a product

1 of one of the contractors who would like to share them
2 with you, but they can't give you the written copies
3 yet because they have to be vetted through our office.

4 MR. ELISBURG: Excuse me. You don't have a
5 written document that we can look at that says here's
6 the game plan?

7 MS. GANGI: Yes, we have a flow chart that
8 we're able to show you how we process the cases through
9 our case management procedure, and the folks have the
10 procedures. If Bev tells them to show them to you,
11 they will.

12 Where did Bev go? Oh, okay. She's actually
13 seen representative samples of those procedures. Bev,
14 they said they wanted to see the written procedures.
15 We'll need to have Steve provide those for us, if
16 that's okay with you.

17 MS. COOK: Yeah. I will just tell you, these
18 are very rough drafts. Okay. It's Claudia's first
19 shot at, okay, does this make sense? We had to have
20 something to start with. We're working through those.
21 I do believe that there are going to be variations on
22 every single claim, so that trying to get something in
23 place that is one-size-fits-all is going to be tough
24 for us.

25 MR. BODEN: I just wanted to note that the

1 committee hopes that we see things that aren't complete
2 because otherwise we really won't be able to do our
3 job.

4 MS. GANGI: That's exactly what you'll see.
5 We're trying hard, and we're giving this our best shot.
6 We're giving it our best shot.

7 MS. SPIELER: Maybe we could talk for a
8 minute about the question, and Claudia, why don't you
9 sit down at the table because I think we're probably
10 going to need you here.

11 When we initially met last -- you know, from
12 the very beginning of our meetings in, I think it was,
13 January of 2001, there was substantial interest among
14 committee members who have had experience with both DOE
15 and with the handling of claims that there be as much
16 integration as possible and as few new initiation forms
17 as possible for claimants, and I was a little confused
18 yesterday and wondered if you could explain to the
19 committee exactly what happens to a claimant when they
20 show up at a resource center who may have a DOL C Claim
21 and may have a Subtitle D Claim and what they're told
22 and what they fill out and how those claims are
23 processed, because I think there was some confusion
24 about, well, there are about 11,000 claims that entail
25 Subtitle D Claims but the vast majority of those also

1 have DOL components to them.

2 Exactly how are people being asked to
3 initiate the process, and to what extent is it a sort
4 of global initiation or do they have to initiate at
5 sort of many steps along the way, and how is that
6 communicated to them?

7 MS. GANGI: Is Virginia Johnson on? Did we
8 hear her come on the line? Okay.

9 The way we understand it from Virginia is
10 that in each resource center, if an applicant -- when
11 an applicant comes to see them, they can choose to file
12 for the Department of Labor benefits as well as for the
13 state benefits. They're advised about what the
14 benefits are -- I mean, what the application process is
15 for each of those applications. They have a separate
16 application for the state benefits and a separate
17 application for the federal benefits.

18 At the resource centers, the case managers
19 there assist the workers to complete those forms, if
20 they request assistance. The applicants will
21 frequently bring in records that they have stored or
22 kept or they have from their own physicians to
23 supplement the information that goes with the
24 application.

25 When they fill out the application for the

1 Department of Labor, they also can complete a work
2 history form which is similar to the -- and DOE gets
3 copies of everything that they fill out, the federal
4 forms -- I mean, the Labor forms and our forms. Okay?

5 MS. SPIELER: But when you say a state form,
6 what is that form exactly? It's not -- I gathered
7 yesterday that it's not an application for state
8 workers compensation benefits.

9 MS. GANGI: No, ma'am. No, ma'am, it is not.
10 It's an application to come before the physician
11 panels. So that, the worker completes information that
12 will help us when we contact that person, once we get
13 the application here and we get our rule in place and
14 our state agreements, we can talk to that person, if we
15 need additional information, we can have them sign
16 consent for release of information forms, if we need to
17 get information from a specific doctor maybe that they
18 didn't send us information for, because we try to help
19 the applicant. Our goal is to help the applicant pull
20 together a really sound case that can go forward for
21 the physician panels.

22 Did I answer your question?

23 MR. ELISBURG: Is there a -- when I walk into
24 that office, is there -- does the intake person have
25 some kind of a checklist for the Subtitle D information

1 to say, do you have this, do you have that, do you have
2 this? I mean, is there some way? Because I'm coming
3 in as a claimant, and I'm not sure I know anything
4 other than I was told to come to this resource office
5 and tell them I bet I was sick.

6 You know, do they have some guidance
7 document?

8 MS. COOK: I will tell you, I've been to a
9 couple of the resource centers and looking -- just to
10 make some generic statements. First off, in the two or
11 three that I've been in, I've been extremely pleased
12 about the -- just the appearance of the offices.
13 They're very private. It's very comfortable, and I've
14 met some of the case workers and I'm very pleased with
15 the quality of people we have.

16 I mean, everything from -- some of them have
17 toys for kids to play with, you know, the kind of
18 seating, I mean, everything. So that, the appearance
19 is to make people comfortable, first off, and that the
20 people there, I think, are very good.

21 I've talked to them about that exactly. I
22 have seen checklists in the offices that they sit down
23 and, you know, go through, okay, this is the kind of
24 thing you're going to need. They have told me, though,
25 often the first -- whether it's a first meeting or the

1 first, you know, hour or so of the meeting, it's
2 usually just a generic discussion, that they talk with
3 these people about, you know, their life and what
4 they've been doing and what they're worried about and
5 all that kind of stuff. People just want to talk a lot
6 at first.

7 They get down then to, okay, this is what's
8 available and this is what you have to -- you know,
9 this is what we want to pull together, you know. This
10 is what we need to get. Do you think you have this?
11 Do you think you have that? Do you know where your
12 husband worked? Do you know if any of his friends are
13 still alive? That kind of stuff. But I've seen those
14 kinds of checklists that they work through, but what
15 they've told me is you gotta do it at sort of a
16 different way, depending on who you're talking to and
17 what their situation is and all that, but it was fairly
18 structured so that they had a list of information that
19 they were working through.

20 MR. ELISBURG: If I go to nine different
21 intake offices, will I get nine different checklists?

22 MS. COOK: Like I said, I've only been to a
23 couple, and the checklists were very similar. So, I --

24 MR. ELISBURG: I was just asking. If you're
25 running --

1 MS. COOK: I haven't seen any.

2 MR. ELISBURG: -- this out of Washington, is
3 there a cookbook that says this is how you do it at the
4 intake offices?

5 MS. COOK: There is specific information
6 that, you know, goes to all those offices, all those
7 resource centers, that we need, and they are working to
8 that, I think, very effectively. That will get refined
9 as the rule gets finished and all of that, too, but I
10 think it's consistent. We have to go back and do a
11 consistency check after we finalize.

12 The resource center managers are in next
13 week.

14 MS. GANGI: Oh, the point of contacts.

15 MS. COOK: Oh, that's the point of contacts
16 that are coming in next week.

17 MS. GANGI: They will be in right after the
18 rule comes out.

19 MS. COOK: Yeah. They were in two weeks ago,
20 the resource center managers were in, and we had
21 discussions exactly around these subjects with all of
22 them together.

23 MS. GANGI: In our office, we do have a
24 uniform checklist, and it parallels the ones that are
25 used in the resource centers. You'll be able to see

1 samples of all that if you come up or we could have
2 somebody bring some down, if you would like to have
3 them now.

4 MS. SPIELER: That might be a good idea,
5 because the -- I know that the chairs of the
6 subcommittees will be able to meet with you, but I'm
7 not sure how many other committee members will be able
8 to join you today because a number of people, I think,
9 are leaving town, and so I think that on these specific
10 issues of, you know, sort of walking through the
11 process, probably this committee will -- I think
12 there's a fair amount of expertise on the committee,
13 but we will delegate it to the subcommittee through the
14 subcommittee chairs to really sit down and try to make
15 suggestions to you about where they think there might
16 be places you could improve it.

17 Jeanne, I think, had something she wanted to
18 ask or say.

19 MS. COOK: Let me just make one comment on
20 that, too. There are two aspects of improvement on
21 this, too. One is, to accurately ask for and get the
22 right information, and the second one is, to make it
23 understandable to people, and those are two very
24 different things.

25 One of the biggest issues that I keep running

1 into is people being very confused when they get asked
2 a question. By the fact that they got asked is giving
3 people the impression that someone's fighting them on
4 something, and we're just asking what they have, so we
5 can add it to what else we can find, and so we could
6 really use help with that situation, on how to ask
7 those questions in a non- --

8 MS. SPIELER: I'm sorry. Fire alarm system.
9 Didn't say it was a drill. It said they were going to
10 exercise the alarm for five minutes.

11 MS. COOK: I actually -- I think the
12 communications with the claimants, both written and how
13 you ask questions, are incredibly important and
14 difficult to get right. To be both accurate and clear
15 to people is, I think, an enormous challenge in these
16 kinds of programs, and it would be nice to, with the
17 new programs, to see if we could get that piece right,
18 and I think that particularly people who work directly
19 with claimants regularly would be -- may be able to be
20 incredibly helpful to you in thinking about that.

21 Jeanne, you had something you wanted to say.

22 MS. CISCO: Do you think I should go ahead?

23 MS. SPIELER: Why don't we just take a break
24 until the fire alarm system quiets down?

25 (Fire Alarm)

1 MS. SPIELER: We're being handed out some of
2 the flow chart and processing information from the OWA
3 Office.

4 A number of people suggested to me during the
5 break that it's impossible as a full committee to
6 really be as helpful as we might like in sort of the
7 specific processing of the claims, and so I guess,
8 Jeanne, you were about to say something when the alarm
9 went off. Maybe we could start there and then figure
10 out how the committee could best be helpful on these
11 kinds of issues.

12 MS. CISCO: I first want to

13 MS. CISCO: I first want to say that our
14 resource center is excellent. We work very well with
15 them back and forth. They do a very, very good job,
16 but I do have a question. If -- am I allowed to give a
17 scenario here?

18 We're talking about the paperwork and the
19 filing, and I was talking to you at the break. One
20 concern I have in the difference in numbers is that
21 many people directly filed with DOL. You don't have
22 those numbers. Our resource centers were not set up,
23 and those people are eligible for a state claim in a
24 lot of states, and I'm wondering if there's a way that
25 we can get that from DOL, to make sure that we

1 contacted everyone, and the other question while I've
2 got the mike, if you get a claimant, say a widow comes
3 in, and they have all the medical that they can get,
4 and they want to file a state claim, and your resource
5 center looks at it or us, is there a form to try to
6 obtain more information that is completed, that the
7 resource center does to help them find more medical,
8 and is there anyone you send it to to evaluate it to
9 see -- I'm looking at the flow chart, whether or not
10 it's a valid case and you would go on with it?

11 MS. COOK: Let me talk to both of those.
12 First off, the whole DOE/DOL interface. As you can
13 imagine, it was somewhat difficult, and Josh and I were
14 just talking about this. Apparently I was going to try
15 to get through two whole days to not say it was before
16 I was here, but apparently before I was here, we came
17 to somewhat of an impasse with DOL on that sort of
18 sharing of everything from forms to information and all
19 that.

20 It's somewhat understandable in looking at
21 the different roles. We, DOE, are really in the role
22 as the employer, at least a one-step removed employer,
23 and DOL is an administrator. Okay. So, their
24 perspective is different than ours. An advocate versus
25 administrator is a different role. Okay.

1 But nonetheless, so we kind of came to an
2 impasse. There are some things that are very similar,
3 plus there's different sets of people that go into
4 different ones, so their forms have them signing things
5 that we don't, wouldn't have on ours, that kind of
6 stuff.

7 Having said that, our relationship with DOL,
8 I think, is getting much, much better. There's a lot
9 of sharing of information that's happened recently, and
10 Josh can give us a little bit of a rundown on some of
11 that, especially on some of the dose reconstruction
12 stuff and how we get with NIOSH and how that goes back
13 to DOL and how we're going to share that kind of stuff.

14 I think it's getting better, and I think we
15 can get back on track with them, but the original
16 impasse was there, and we're trying to work that
17 through.

18 Because I do think there's some level of sort
19 of one-stop shopping that we can get to that makes it
20 so a worker doesn't have to sit through all the
21 differences in filling out multiple forms, we want to
22 get through that.

23 The other one you went to is -- oh,
24 additional things. I think when we get to going
25 through the flow chart on DOE, you'll see where the

1 medical team, you know, third line down, medical and
2 exposure data, it's halfway across, there are things
3 that we're trying to address, everything from how do
4 you get the information from that which may be in the
5 hands of DOE's contractor sites or in a storage
6 facility some place.

7 Most of my records are some place in Seattle,
8 I think. Whether we can find -- is that correct?
9 Yeah. She knows where my records are. I think they've
10 started thinking about how they're ever going to find
11 my records. Yeah. There are a lot of boxes in Seattle
12 from my office.

13 So, you know, trying to pull that together
14 and find that, but the things that have come up
15 recently, like the workers in Espaniola telling me that
16 the hospital there is saying, hey, you know, we don't
17 have time to go find their records in the basement.

18 There are going to be situations like that
19 that are going to be almost site-specific and
20 community-specific, where we're going to have to work
21 through that to figure out what's the best way to help
22 assist people get to medical records. It's even going
23 to be down to in these small communities, which doctor
24 took over which practice in town. I mean, we
25 definitely deal with that in Idaho, too, and find out

1 where they went with things because from my -- in
2 talking to my mother, for instance, and her generation
3 and a lot of folks that we deal with, they're retired.
4 They would never have thought to keep their own medical
5 records. My mother has no medical records. She said
6 that's what the doctor keeps. That's not for me to
7 know almost.

8 Okay. We deal with a lot of people who are
9 in that situation. They didn't feel like it was their
10 business, and so for them to, you know, go demand that
11 some doctor give them their records is something that
12 is not comfortable for them, and whether we do that on
13 their behalf or how we work that is something we're
14 really going to have to deal with.

15 MR. BLEA: On the resource centers, what
16 would be the problem with hiring somebody to go to the
17 lab or the place of business, the DOE site, and go to
18 the medical center there and say okay, here's the
19 person who will go in the basement and go through your
20 archives and pull John Doe's, Jane Doe's medical
21 records as well to the hospital, if they give us
22 access, we have an affidavit saying yeah, you can go
23 get my medical records?

24 MS. COOK: That is actually -- the people
25 that are coming next week are the point of contacts at

1 the DOE sites who have responsibility to get to
2 everything that is on that site or in storage from that
3 site. So, we have -- those people are already in place
4 to chase down everywhere possible.

5 It's the community interface, though, that
6 we're hanging out a bit right now and we need to think
7 about how to do that. One of the things, for instance,
8 not all -- we talked about medical records, but we also
9 talk about historical information on operations in a
10 facility and those aren't necessarily in -- that's why
11 you need somebody on site to figure out where all this
12 stuff is. They aren't necessarily -- like at Los
13 Alamos, for instance. They are not necessarily in with
14 the medical records. It may be in occurrence reports,
15 records, that are all the incidents that happened in a
16 certain building that may be in storage some place that
17 was classified and is not now, you know. So, we're
18 chasing down records in a lot of different manners.

19 MR. BODEN: I'm wondering if we -- we have
20 not much over an hour left in the formal part. We're
21 supposed to stop at 10:30 or 10:45. So, I'm wondering
22 if we can't figure out a way to sort of be really
23 focused. It's a long list, and I think we need maybe
24 to do the big picture now and then to figure out how
25 we're going to work after the meeting to get some

1 things done.

2 So, you know, one suggestion is either to go
3 through this flow chart directly or for people to ask
4 questions about things that they see in the flow chart
5 that they don't understand but to do it in a very sort
6 of efficient, you know, couple of minutes sort of
7 framework.

8 MS. SPIELER: Actually, let me ask for
9 guidance from Don and Vicky here who are the co-chairs
10 of the committee assigned to this. How do you think
11 the best way to proceed is? Because I do think Les is
12 right, that we can't possibly go through the small
13 specifics of process right now and have the larger
14 discussions about some of the other issues.

15 MR. ELISBURG: Our thought is kind of take
16 this off the table. We have the charts. Let us go and
17 spend some time with them in their office and see what
18 they're doing. Then I think we'll be able to pass back
19 to the committee here's some of the issues we think
20 need to be addressed.

21 MS. SPIELER: I would ask, Bev, if it would
22 be possible that, based on whatever Don and Vicky and
23 others who accompany them after this meeting recommend,
24 that it might be -- make sense to convene another
25 meeting of the subcommittee between the meeting -- this

1 committee -- between these committee meetings so that
2 they can work directly with you on trying to figure out
3 some of the issues.

4 I mean, I'm sitting here thinking about some
5 of the issues that were raised in Colorado to us by
6 people about the obtaining of medical records and costs
7 and, you know, a whole variety of things. I think that
8 the subcommittee really has that expertise and it would
9 be more useful to work -- have people working closely
10 and directly and seeing whether you could draw on that
11 expertise in the development of the process after the
12 rule is out.

13 MS. COOK: Absolutely. I very much would
14 appreciate that kind of assistance, because one of the
15 things is people worry a lot about something that maybe
16 a driver to their claim but in fact that may not be the
17 thing that's most important to chase down, and we need
18 to be able to tell people with conviction don't worry
19 about that. This is the things we need. So, we need
20 that assistance.

21 MR. ELISBURG: Actually, that's the one thing
22 I think -- I'm not sure you can respond to it, but I
23 think it needs to be considered as you've been
24 describing what you've been doing in your search for
25 the boxes and all that stuff, is, whether someone has

1 done some kind of evaluation or analysis of what kind
2 of information do we really need versus a complete dump
3 and search that is not cost-effective, is horrendous
4 for the sake of finding one nugget some place and
5 whether there are some, you know, sort of shorthand,
6 shortcircuit ways to be constructing some of this
7 information, so that you're not creating a cottage
8 industry of searching the records centers.

9 MS. COOK: Exactly. It's very scary, Don, to
10 think that we think alike, but that's exactly what I'm
11 concerned about. People worrying about a lot of stuff
12 that may not be value-added. We want to get focused on
13 the things that are important.

14 MR. BLEA: I hope this is not out of context,
15 but I've gotta ask you a question and I'll wait for you
16 to answer it, and then I have to ask you another one.

17 You as DOE, would you know or would you have
18 access to a contract between one contractor and the lab
19 or a contractor and the prime subcontractor?

20 MS. COOK: Access to a contract means see
21 what they actually -- their contract is?

22 MR. BLEA: Yes, right.

23 MS. COOK: I can only tell you from my
24 experience as a field manager, and yes, I could see all
25 the contracts that Bechtel had with their subs. I

1 could see that.

2 MR. BLEA: We're going back 50 years, 40
3 years.

4 MS. COOK: There is historical evidence. Can
5 we find them?

6 MR. BLEA: Yes, that's what I'm asking.

7 MS. COOK: That's another issue. I don't
8 know that for sure yet. I can't answer that with
9 conviction, but that is something we need to look for.

10 MR. BLEA: Okay. The reason I asked that, it
11 would be very difficult for you, DOE, to find that, but
12 my understanding is that they're asking the claimant to
13 prove that they worked at this facility for this
14 contractor and bring that contract between this
15 contractor -- I have a lawyer right here saying that's
16 happening, and why -- just what Donald's saying. Why
17 would that even be necessary? For the claimant, I
18 mean, to have access to even find that would be almost
19 impossible to get that.

20 MS. COOK: This is one of the places where
21 we've got a misunderstanding. Okay. This is, you
22 know, sort of the DOL part of it, too, because, you
23 know, some of the things people are misunderstanding is
24 some of that.

25 We just have verification of employment.

1 Now, for someone to say I worked for this sub who came
2 here on site and we've got to kind of chase that down,
3 we're getting those kinds of things in a generic sense.
4 So, like I said, Hanford gave me this whole flow chart
5 of who all ever worked at Hanford and what they know
6 about who the subs were that worked there, but for what
7 is the responsibility of the individual employee, we're
8 trying to get down to them saying I worked on site for
9 this guy at this period of time, and do you have a
10 record of that or a written affidavit, one way or the
11 other, but we're trying to get them out of the -- I
12 don't expect any employee to have to come up with the
13 contract between the sub and the contractor, but they
14 may be getting asked questions in a way that makes them
15 feel like they're responsible for that.

16 If it is a mom and pop organization, and it's
17 10 guys came in to paint something, that's going to be
18 a little harder for us, but there's going to be some
19 exceptions, I'm sure, that we're going to ask people
20 can you help us chase this down, but in general, no, we
21 don't expect that.

22 MR. BLEA: So, and I just gotta ask this.
23 All right. So, there could be possibly a subcontractor
24 come in, no matter what kind of work they do, ma and pa
25 or whatever type operation. They may be only to the

1 DOE site for a day, 30 days, two weeks.

2 Now, if the claimant goes to Social Security
3 and says yeah, you worked for this company, and the
4 only other way I could see it is maybe a co-worker, the
5 company may be out of business, whatever, but I think
6 to even think that that claimant could track down the
7 contract, I think it shouldn't even be asked. It
8 should just be off of the table.

9 MS. COOK: What DOL's doing is going through
10 the steps. This is how they've explained it to me.
11 They're going through the steps to say, you know,
12 what's the first thing? Do you have -- you know, does
13 the employer have the record, and then what records do
14 you have, but the end of the day, written affidavit is
15 acceptable to them. Written affidavit that says you
16 were there and you worked on that site for this period
17 of time. They are accepting those.

18 So, again, people asking those questions is
19 because you'd like to have the other evidence, but it's
20 not a cut-off.

21 MS. SPIELER: Let me intervene here. How
22 many of the people who are here from the committee can
23 meet with Claudia and her shop at the close of this
24 meeting today? Jeanne, can you? Don, Vicky. Okay.

25 Here's what I think we need to do because I

1 think these questions are incredibly important and also
2 are important in terms of communication out to the
3 field and it may be useful in terms of your discussions
4 with your point people out in the field to know what
5 the concerns are, so you can try to sort it through.

6 Why don't the three of you at the close of
7 the meeting today go over and spend some time really
8 figuring out what's happening at each step of the
9 process and then work with Bev or Bev's staff or the
10 OWA staff on setting up a time for the members of that
11 subcommittee to reconvene again and invite the rest of
12 the subcommittee members and make sure that there can
13 be a kind of full meeting, and I leave it to you and
14 the subcommittee chairs as to how that will be
15 organized, and where there would be a possibility of
16 really spending some time going through each step and
17 talking about each scenario and trying to figure out
18 what their concerns are and whether you've already
19 thought about them and/or whether there's a
20 communication problem or whether, you know, all of
21 those -- all of the possible scenarios that may come up
22 because I know that some of the people who are working
23 out in the field, like Jeanne and Ricky and Vicky,
24 really have a sense about what kinds of things people
25 are concerned about in terms of the processing, and I

1 think that although you get some of that, you may get
2 it in a more pointed and useful way from the
3 subcommittee.

4 MS. COOK: I really appreciate that. If this
5 was easy, we'd have it all figured out by now. So, it
6 would be great.

7 MS. SPIELER: We're acutely aware that this
8 isn't easy.

9 MS. COOK: The only other comment I want to
10 make sure that I tell the full committee about, though,
11 is, and that is, the whole -- the legal aspects of this
12 and people's individual rights and security aspects of
13 this. Okay.

14 I do get a lot of questions like that, and
15 when I've talked to a lot of the union reps, too. I
16 mean, there are people who are hesitating because
17 signing off a piece of paper that says that all of your
18 information is accessible to the world is something
19 that causes me a concern, you know.

20 I've had people say things like, well, I
21 mean, I've had a Q clearance within the Department of
22 Energy since I was 21 years old. So, there's nothing
23 in my life that nobody knows. But I don't want people
24 looking for medical records going through my entire Q
25 clearance background because it's not necessary, but it

1 is a place where you can easily access information.

2 So, deciding on what the right set of
3 information is that you want to tap into, that you want
4 to make available, but you transfer between agencies
5 and all that kind of stuff, those are big issues for us
6 and making sure that we secure that information.

7 The other part of it is trying to figure out
8 somebody's work history and protect security at our
9 sites. I will tell you that this is a real issue for
10 us. There are materials, as we talk about things like
11 dirty bombs and all that kind of stuff, there are
12 materials at our sites that we really don't want those
13 locations easily accessible to folks, and, you know, we
14 just have to work through how to do that.

15 We have our workers, especially those that,
16 you know, have been involved in the complex for a very
17 long time, who took their security responsibilities
18 very seriously and still do and should, and so they are
19 very concerned about when someone calls them up on the
20 phone from NIOSH and starts asking them about what they
21 did and where, you know, they're asking us what can we
22 say and what we can't say and how you do it and all
23 that. So, we're working through those things.

24 You know, when -- to be -- and I don't want
25 to distract from the time here, but to be blunt, on

1 September 11th, and I was a plane flying out of here,
2 trying to get the Idaho site locked down so that I
3 could protect 8,000 people there in case something was
4 coming in, was something that was very important to me,
5 and so we need to understand that there's a fine line
6 there, too, that we have to protect all of those pieces
7 of this picture, too.

8 MR. ELISBURG: I think you've got an
9 excellent point that you're making. What we're hearing
10 back from time to time and that's where you may have to
11 sit down with the Labor Department and some other
12 people, is if that's the problem you have to deal with,
13 then you cannot put that burden on the claimant. You
14 cannot tell the claimant we need your Q clearance. You
15 know, you've got to -- you know, I think what you're
16 saying is the reason why the Department of Energy has
17 to be pro-active with these claimants and simply, if
18 somebody says I worked in Building 21, okay, they
19 should perhaps then -- that's the end of the
20 inquisition.

21 MS. COOK: Unfortunately, some of -- the only
22 people who know what went on in Building 21 are some of
23 those workers. So, that's part of it, too. Pulling
24 together the big picture in the generic sense rather
25 than the individual sense, so that individual worker

1 isn't responsible for it, but they may be part of that
2 whole database which is back to, you know, my friend
3 who's dying of cancer wanting to get his information in
4 so people know everybody else that worked in that
5 building, what was going on at the time.

6 You know, it's a give and take, but they're
7 part of how we generate that database, too. So,
8 they're willing to do that. Many of our workers are,
9 but they are very acutely concerned about protecting
10 the security of our sites, too, and I appreciate that.

11 MS. SPIELER: Clearly, that's ultimately DOE
12 internally has to figure out a way to put together the
13 data that's adequate for NIOSH and DOL but protects the
14 confidentiality.

15 Now, that's -- and the security issues, and
16 that's something that -- I mean, if DOE gives the
17 adequate -- gives the information in a generic way to
18 NIOSH and DOL that's sufficient to answer their
19 questions, then I would imagine that DOL and NIOSH
20 would work with DOE on those kinds of issues.

21 Greg, did you have --

22 MR. WAGNER: The point that you make really
23 speaks strongly in favor of moving the program towards
24 a much more generic presumption-driven program that
25 will permit groups of workers to either qualify or not

1 on the basis of the best-available aggregate
2 information that you can keep within the DOE, and it
3 doesn't violate either the security or the personal
4 privacy issues.

5 I think they're incredibly important and that
6 I encourage you as you're talking with people about
7 program revision to push in that direction.

8 MS. SPIELER: I think that's an extremely
9 good point, and it isn't something that is going to be
10 intuitively obvious to DOL where there used to be
11 individual eyes sort of analysis of individual claims
12 and then the application of any available presumptions
13 within the program that they're dealing with, and so it
14 actually asks them, I think, to think somewhat
15 differently about this, and Don, who's had a lot of
16 experience on the DOL side, I think, could probably be
17 extremely helpful in helping DOE think through how this
18 might -- how this could be designed to meet all of
19 those needs.

20 MR. BLEA: At all these sites, have we got a
21 picture at any of the sites or some of the sites of
22 existing buildings or buildings that are no longer
23 there as to what exposure or what was in those
24 buildings by the claimants who have already come in and
25 put claims?

1 I mean, have we built like any sites -- this
2 building is no longer here, but I was exposed, we were
3 exposed to this?

4 MS. COOK: In various stages, in various
5 ways, and that's where you get into the field sites
6 records and research, and that's what I talked to the
7 field managers about a few weeks ago, is, there's a lot
8 of reasons we need to do that. Everything from doing
9 D&D work at these sites and clean-up and all of that to
10 for this purpose, and then we also talked about moving
11 forward, how do we keep records better?

12 But it's at various stages at various sites.
13 In Idaho, there were 52 operating reactors at that
14 site. There are three now, but there were 52 at one
15 time, and so facilities were utilized. They were taken
16 down. There would indeed be the green field, you know.
17 They're not there anymore. The only way you're going
18 to know completely what all went on in that facility is
19 talk to people that worked there.

20 MS. SPIELER: I'm actually --

21 MR. SILVERMAN: This is Josh Silverman.

22 Both NIOSH and our office are building -- are
23 working to build facility profiles that we are sharing
24 with one another, so that we understand what the
25 processes were at a large site level, at a building and

1 down to particular process area levels.

2 The goal of these programs is to get in some
3 cases to what Greg described, that we know because of a
4 level of contamination or a type of process in an area
5 that exposures met a particular threshold that helped
6 the worker qualify for certain types of diseases.
7 That's what we can do, given the way the legislation is
8 currently structure and the way that cases are -- have
9 to process through the systems, but we need to develop
10 a much more robust database of information to be able
11 to evaluate those claims, and so that's the process
12 that both the agencies are working towards, you know,
13 working towards developing at this time, and so that --
14 but that -- I think it's important to note that that's
15 the goal of the information management strategies here
16 and the goal of the records and research work that's
17 happening at the facilities.

18 So, we know some things at some places better
19 than others, and we will be interviewing workers so
20 that we can develop a much more robust, much more
21 sophisticated understanding of those processes.

22 MS. COOK: Our best example is continual
23 identification of where beryllium was used in our
24 complex, you know. It continues to come up, and we
25 continue to find places that we didn't really know that

1 we were using beryllium at.

2 MS. SPIELER: I'm going to, taking Les's
3 advice seriously here, try to move this along, and
4 looking at this flow chart, a lot of the work of the
5 subcommittees of this committee and a lot of the
6 concerns actually focus on the point after -- at which
7 yes, reasonable evidence complete question mark, yes,
8 go to physician panel, and what happens after that are
9 issues that actually aren't really dealt with on this
10 flow chart, and the issues of the state agency
11 relations, the contractor/insurer questions, and the --
12 well, the physician panel questions obviously.

13 So, let's talk initially just sort of in
14 sequence order on here. The first would be the
15 question of okay, you're sending something to the
16 physician panel, and Steve Markowitz, who chairs that
17 committee, is not -- subcommittee, is not here, but you
18 said, when we started this morning, that you've moved
19 to assuming that there would be a uniform standard.

20 Are you in a position to tell the committee
21 what that uniform standard sounds like or what the sort
22 of language that you're using is in terms of the
23 uniform standard? What the expectations are with
24 regard to the provision of medical evidence to the
25 panel, and how the decisions will be made by the panel?

1 What your current thinking on that is?

2 MS. COOK: You know, I really hesitate to go
3 there. I mean, I really think that we're going to get
4 those words settled out in the next week or so, and I
5 really think that we can move forward, and I just hate
6 to devote a lot of effort into that discussion that may
7 end up being slightly different or somewhat different.
8 I just don't think I can go there at this point.

9 As we talked about yesterday, what we're
10 trying to get to, though, is something that is, you
11 know, serves both purposes, which is, you know, being
12 as leaning then, as forward leaning as possible for
13 those that we have a pair but also gives a basis that
14 gives somebody a strong case for that isn't a pair, and
15 they can really have a good battle with the states.

16 MS. MUELLER: This is Kathryn. I have a
17 question.

18 I'm still not clear on the issue of
19 "reasonable evidence". In other words, what would be
20 the criteria for it to go to a panel, and I think our
21 committee presented strongly that we didn't really
22 think there should be any real criteria, other than
23 employment and existence of some sort of medical
24 condition, and that the physician panel should be
25 making the determination after that.

1 So, is there going to be some other step or
2 some other criteria that's going to be required before
3 it goes to the physician panel?

4 MS. KIMPAN: Hi, Kathryn. This is Kate.

5 I think that, as you saw in the Notice of
6 Proposed Rulemaking, there was a range of
7 possibilities, and I think --

8 MS. MUELLER: Right.

9 MS. KIMPAN: -- that what Bev and others have
10 been discussing recently are the likelihood that
11 exactly what the statute says will be the criteria on
12 the way into the physicians panels. As Bev said, we
13 want to be as open and forward leaning as we can and
14 get these claims as you say for the medical causation
15 finding that we're expecting these physicians to do.

16 MS. SPIELER: Could you just clarify what you
17 think it is that the statute clearly says? Because I
18 think there's actually been disagreement about that
19 between staff and this committee in the past.

20 MS. KIMPAN: I can say what I think it says.
21 I don't have it in front of me, and it is me speaking
22 from memory, not the Department of Energy saying what
23 the statute says. Let me clarify. I'm one of the few
24 people that isn't a general counsel.

25 But it says that you have to have worked in a

1 DOE facility. You have to have an illness that could
2 be, may be caused by toxic exposures at that facility.
3 I can get you the actual language to say what that is,
4 but basically in the public comment and this committee
5 opined as well when we talked about the application of
6 state criteria, such as timeliness on advance to the
7 panel, we got many comments like Dr. Mueller just said,
8 that the panel should be a medical causation finding,
9 that that is a non-legal exercise. It's a medical
10 exercise, and I think that the consideration we're
11 giving is very strongly to that, that the panel should
12 have the statutory requirements in order to get there,
13 and then at the panel, you'll see when the rule is
14 issued in final form.

15 As relates to the causation standard, I can
16 certainly discuss the range of possibilities. I know
17 this committee is --

18 MS. SPIELER: I'm not sure that's necessary.

19 MS. KIMPAN: Okay.

20 MS. SPIELER: Let me suggest. I'm sitting
21 here kind of musing about the limitations of our time
22 and what we can most usefully engage in. I think that
23 if the Department's not willing to engage us in a
24 discussion about the -- where the rulemaking is at this
25 point, I think the committee has made very clear what

1 our opinions are with regard to the resolution of the
2 issues.

3 So, if there are things particularly that,
4 Kathryn, you want to raise or that Greg wants to raise
5 or other people who have been working -- who worked
6 with that subcommittee last year would like to raise
7 beyond the recommendations that have been clearly
8 articulated by the committee to the Department, then it
9 might be worth talking about those, but beyond that,
10 just in terms of -- there doesn't seem to be a lot of
11 point in going around rediscussing those
12 recommendations if the Department's not in a position
13 to engage with us on that.

14 MS. MUELLER: I just wanted to reiterate that
15 point.

16 MS. SPIELER: I appreciate it, Kathryn.

17 MR. WAGNER: To support what Kathryn's
18 saying, in looking at the flow chart that she
19 unfortunately doesn't have in front of her, there is a
20 step in the DOE flow chart now that says finalized case
21 files goes to a decision point, reasonable evidence
22 complete question mark before referral to a physician
23 panel versus notify the applicant of rejection and that
24 ends the process.

25 I think that that's a critical decision

1 point, and the physician panel group of this committee
2 did indicate that we thought that the issue wasn't some
3 DOE determination of the reasonableness of evidence at
4 that point.

5 MS. COOK: Yeah. Let me -- you know, these
6 charts are also in flex now. So, on draft, there's two
7 plates on here, meets state MIU requirements and that
8 one, reasonable evidence. I mean, what is contained in
9 those have changed drastically since last Fall. I will
10 just tell you that. Your comments are taken very, very
11 seriously as were others.

12 Let me give you an example of the kinds of
13 things and maybe this helps clarify it a little bit.
14 You know, the statute says an illness as a result from
15 a toxic exposure. So, if it's someone that says that I
16 have a nervous condition because I worked in the
17 radiation area and some day I might get sick, you know,
18 that's -- that doesn't fit within this program. I
19 mean, it's those sorts of things. We're not talking
20 about -- I guess that's the only thing I can give you
21 as an example. You know, that's the kind of different
22 -- this thing does talk about being ill from a toxic
23 exposure.

24 MR. WAGNER: The other thing I really wanted
25 to say before and I tried to say it yesterday and I'm

1 not sure I'm being sufficiently clear, on the issue of
2 uniform causation standard which I think we as a group
3 have tended to support, I would hate to see that
4 uniform causation standard be framed in a way that was
5 other than what you call forward leaning, justified on
6 the basis of, well, this forward-leaning standard
7 wouldn't necessarily be acceptable to a number of the
8 states that we're operating in, and so we need to be --
9 back off from that.

10 What I'd encourage consideration of in the
11 alternative is using the -- where the DOE is the payer,
12 establish that forward-leaning standard and then, if
13 there are certain additional information modifications
14 or, you know, further refinement that needs to be
15 state-specific in another pathway, that the fact that
16 you have a single standard doesn't mean that there
17 can't be additional work requested of the medical
18 panels to further provide information that is
19 specifically relevant to the state that the applicant
20 is operating within.

21 MS. COOK: I appreciate that. That's -- I
22 think that's a good way for us to think about it. It
23 goes back to what Don and I talked about earlier,
24 though, too. Deciding where the value-added is, and I
25 think as we get into this, some suggestions from all of

1 you on when we get into those situations, where there's
2 not a payer, helping us figure out what that additional
3 information is will be very valuable.

4 MR. ELISBURG: I'd only like to point out
5 that the whole point of the legislation of Subpart D
6 was to take care of people who couldn't get into the
7 existing state systems or who were rejected by the
8 existing state systems. You have no obligation to have
9 a standard to try to meet the highest common
10 denominator or highest threshold or to match anybody's
11 barrier. That was the only point of the congressional
12 enactment, and in point of fact, I'm not sure where Dr.
13 Wagner's going because I -- it seems to me whether it's
14 a payer or a non-payer, the standards shouldn't be
15 different.

16 I'd be very careful of trying to provide some
17 accommodation --

18 MR. WAGNER: Don, what I was saying was that,
19 I think that the standard needs to be one that's the
20 forward-leaning, whatever that means, DOE standard and
21 then, if there are specific circumstances that require
22 something else, let that be specific circumstances that
23 require something else, but that the single standard be
24 one that is not responsive to the diversity of state
25 requirements but does take into consideration what is a

1 reasonable DOE payer standard.

2 MR. ELISBURG: Okay.

3 MS. SPIELER: I actually think that there's
4 consensus on the committee with regard to this in terms
5 of the discussions that we've had before and in terms
6 of recommendations that we would be making to the
7 Department, that the specific standard of causation
8 that should be written into the physician panel rule be
9 one that is consistent with the one that the
10 subcommittee and the committee previously recommended
11 and that if there's additional work that needs to be
12 done to think about these unfunded claim situations,
13 that that's actually a separable question from the
14 causality -- the general causality standard.

15 I'm not -- I think the committee's been clear
16 on this in the past. Does anyone here think or,
17 Kathryn, do you think that we need to reiterate that in
18 any way in a formal way?

19 MS. MUELLER: I think it's pretty well clear,
20 and that we agree that there should be this more
21 equitable causation standard for the physician panel.

22 MS. SPIELER: Okay. Bev?

23 MS. COOK: Let me just go one step farther.
24 This is our cryptic comments here. We took your
25 comments very, very seriously, and I think that -- how

1 do I say this? I think that you will be pleased with
2 the words that are there, that they will be at least as
3 forward leaning as what you suggested.

4 MS. SPIELER: Great. Then, let me move this
5 forward with regard to the sort of -- let's assume for
6 the moment for our -- for the on-going scenario
7 conversation that we're having, that the claim file is
8 referred to the physician panel, and let's assume for
9 the moment that the rule says that a majority of the
10 three-member panel finds causation, and let's focus our
11 discussions and that therefore DOE believes that this
12 is a valid occupational disease workers compensation
13 claim within the meaning of Subtitle D.

14 Let's talk about what happens now to those
15 claims and see where the issues are that perhaps DOE
16 could benefit from discussion by this committee, and it
17 seems to me they fall into several different kind of
18 topics. One is the kind of -- what exactly -- how are
19 the claims at that point going to be handled where
20 there is a current contract with a contractor such that
21 you can tell a contractor to pay the claim? hat
22 happens on those claims? To what extent and what is
23 exactly the role that you contemplate for MOUs for that
24 subset of claims where you have the contractor in play
25 who will -- who is responsible for the claims?

1 Let's -- and finally, I guess the third set
2 of issues is, well, what happens next in view of the
3 fact that there will be a series of questions under
4 state law about what benefits are to be paid and how
5 they're to be calculated?

6 Thinking first about this issue of, okay, we
7 have a positive physician panel review. We have an
8 existing contractor. So, there isn't a question of no
9 employer or an insurance carrier that wants to raise --
10 what is it that we should be thinking about or DOE
11 should be thinking about at this point?

12 Bev, I think, wants to jump in here.

13 MS. COOK: I would very much at this point
14 appreciate -- and I know we're limited on time. The
15 short answer here from the panel on in a perfect world,
16 how would you like to see it work, because that's what
17 we want to start with, and then we'll work with
18 complications around that, but this is something that I
19 think is going to get very complicated.

20 MS. SPIELER: Okay. Obviously, as I pointed
21 out, the flow chart ends here, but actually we're only
22 about a quarter of the way through the process, I'm
23 afraid, and so the question also as a sort of
24 overarching question is, exactly what should DOE's role
25 be at this point, given that the physician panel has

1 made a positive finding? Because at least my reading
2 of the statute is that the DOE assistance to claimant
3 continues at this point. It isn't -- it hasn't
4 finished its job.

5 MS. COOK: And that's why we have to sort out
6 the words "assist" a claimant to apply for state
7 workers comp, and applying, does it end at successful
8 resolution of it? Does it -- you know, and again, back
9 to in a perfect world, how would you see it working,
10 and where do you see DOE's role, and which windmills
11 should I be fighting?

12 MR. MARTINEZ: Back to what I said yesterday.
13 I would strongly recommend that there be a single
14 contract with a single third party administrator, be
15 that an insurance carrier or an actual third party
16 administrator that is used to dealing with worker comp
17 and paying of worker comp, rather than spreading this
18 across the complex to several contractors that are
19 going to set up administrative organizations that will
20 cost the Department significantly for those
21 administrative organizations, and that you run this
22 through one organization that the Department of Energy
23 has a contract with to pay those claims and issue those
24 checks and process and pay those claims and issue those
25 checks through one organization.

1 MS. SPIELER: Les?

2 MR. BODEN: I think that's a great idea.
3 Trying to get away from complexity and towards
4 simplicity never hurts, and I would add to that a step
5 up front, several that we're talking about a little bit
6 earlier, which is, that I think that part of the
7 process that should occur before the case goes to the
8 physician panel is that there should be -- a person's
9 going to a physician panel because they want to file a
10 state workers comp claim.

11 So, I think that a first report ought to be
12 filled out before that point and then passed to the TPA
13 along with the physician panel results, rather than --
14 again, with this idea of trying to move as close to
15 one-step shopping as we could, and what we discussed
16 beforehand was the idea of including in the state MOUs
17 an agreement to use what would be a single form that
18 would be available to all the sites, a form that would
19 include all the information that any one state might
20 have but might not be the official form that any state
21 used. It seems to me no state would find that
22 particularly difficult to do.

23 MS. KIMPAN: Can I ask one question? I
24 apologize. I missed your comments yesterday, Len, but
25 I know the subcommittee has discussed these at

1 different times way back.

2 If it's a TPA, I presume you mean a non-risk-
3 bearing TPA, somebody gets paid by the touch, and
4 somebody who accepts the findings. Where's the money
5 from? Because the reason I ask, let me just say --

6 MR. MARTINEZ: Well, let me counter that with
7 where's the money from if it doesn't go through?

8 MS. KIMPAN: Well, I guess that's sort
9 of -- in this scenario where Bev has control, where
10 it's a current contractor and she can say through a
11 contracting officer, you must accept Kate Kimpan's
12 claim because our physician panel's found we made her
13 ill, then there's a mechanism to get that paid, and if
14 there's money for a third party to administer, I think
15 that's a wonderful and an eloquent solution, but I
16 guess if I'm a non-risk-bearing third party entity, and
17 I have a positive finding, how does that affect the
18 defenses that Travelers would raise for a Rocky
19 employee or how does that affect the defenses of the
20 State of Ohio would raise?

21 If the TPA is just going to fill out a first
22 report of injury and deliver to the proper place, the
23 same barriers we're talking about would be there after
24 we paid one more TPA.

25 MS. SPIELER: Wait, wait, wait, wait. I'm

1 lost here in the scenario you're suggesting because
2 we're discussing claims in which DOE has privity with
3 the contractor who would be responsible for paying them
4 through a procurement process only right now. So, the
5 question is, for those claims -- we'll get to the
6 others in a minute, but there isn't any issue -- one
7 assumes under the statute and under the rules that you
8 are not going to be raising those claims and those
9 defenses and there will not be payment to anyone who
10 raises those defenses.

11 So, the handling of the claims would be the
12 same. The question is whether you can amend your
13 procurement process in order -- and I'm not an expert
14 on this, but it seems to me that you could, if you had
15 to, you could charge it back to the sites and work it
16 out in your procurement arrangements, but it would
17 still be more efficient to do it through a central TPA
18 than to have it done through the sites.

19 MS. COOK: It could be a generic service
20 we're providing to our contractors that has a third
21 party to deal with these. They'd be thrilled.

22 MS. MUELLER: I'd like to make one comment.
23 I think it sounds like a good way to approach it. My
24 personal experience in Colorado is that dealing with
25 insurance companies who don't understand our treatment

1 guidelines, don't understand our authorization
2 processes and that kind of thing, is very, very
3 difficult.

4 So, I guess if you're going to do that, you
5 need to have somebody who truly has experience in the
6 states that you're dealing with because, you know, it's
7 very complex about what can be paid for and what can't
8 be paid for and all that.

9 MS. SPIELER: A point well taken. Clearly,
10 it can't be some national generic TPA. It has to be a
11 carefully-chosen TPA or TPAs, if necessary, who have
12 familiarity with both the benefit structure, how
13 benefits are determined and the medical treatment
14 guidelines in the states in which you're operating.
15 But a TPA that would as a non-risk-bearing TPA that
16 would be instructed by DOE to provide benefits rather
17 than fighting benefits.

18 It's actually a fairly unique role for -- in
19 terms of instructions to a TPA would have to be
20 carefully thought through through the procurement
21 process.

22 MS. COOK: It gets me back to what Vicky and
23 I worried about, which is, you know, this sounds like
24 one more thing that keeps us from moving forward here,
25 but because I think it'll be a difficult search to find

1 somebody but it's a good idea.

2 MS. POST: Actually, there's plenty of TPAs
3 out there who would be very interested in this kind of
4 work.

5 The question I do have is, though, even under
6 the best-case scenario, on a TPA, depending on the
7 individual state you're in, there could still be issues
8 that arise that have to be determined by an agency. An
9 example. In Iowa, we have employer choice physicians.
10 Now, if the contractor or TPA wants to give up that
11 choice, that's fine, but it seems to me that there
12 could become disagreements about rate. There could
13 become disagreements about physicians, doctors,
14 payments, dah-dah, I mean, on and on and on, and so
15 there could be some issues that even under best-case
16 scenario that would still arise that might call for
17 some kind of litigation, and I would suggest that you -
18 - there needs to be developed some criteria for the TPA
19 to kind of go through to kind of help resolve those
20 issues before they became full-blown litigated stuff in
21 front of the state agencies that are under-funded and
22 overworked at the current time and don't need any more
23 litigation.

24 MS. COOK: My goal in this is to get the
25 money in the hands of the workers who need it and not

1 all the lawyers, and that's going to be the toughest
2 part of the whole thing. No offense to the attorneys
3 in the room.

4 MR. MARTINEZ: We also have an issue
5 associated with the taxpayer and that's to make sure
6 that the costs associated with this program is the
7 minimum cost required which is one of the reasons why I
8 made the suggestion.

9 The other point I want to make is I don't
10 know why you'd ever back charge or credit this or
11 whatever to a site. If in fact you had a central point
12 that you were going to manage this through, it would
13 give you accountability and responsibility at a single
14 point. It would also provide you with all the
15 reporting that you would need to know exactly what this
16 total program cost is because if you distribute this
17 out to the sites, you will never know. You will never
18 know what the total cost of this program is because
19 each site will have its own structure, will have its
20 own way of dealing with these costs, be they allocated,
21 distributed, actually direct-charged, etc.

22 You'd also be able to do your reporting
23 efficiently. You would be able to understand what the
24 total cost of the program is, what the average cost per
25 claim is, standardization, a whole bunch of things.

1 MS. COOK: It is not allocating the money out
2 to the sites. It is our contracts that we have in
3 place now, a part of their overhead or however the fee
4 structure -- I mean, however their structure is set up,
5 they have money in their contracts to deal with the
6 cost issues.

7 Now, you know, --

8 MR. MARTINEZ: Not fees, worker comp issues.

9 MS. SPIELER: Let me intervene here.
10 Clearly, this is a contractor-DOE procurement issue
11 that's going to need to be negotiated, and I'm not sure
12 how much assistance this committee could be on that
13 one.

14 MS. COOK: If this was easy, we would have
15 had this part fixed.

16 MS. SPIELER: But let me say, Pete, are you
17 on the line now?

18 MS. MOSIER: Roberta Mosier is here from the
19 Department of Labor.

20 MS. SPIELER: I'm sorry. Tell me your name
21 again.

22 MS. MOSIER: Roberta Mosier, Deputy Director.

23 MS. SPIELER: Okay. We had said that we
24 would kind of time out from this meeting to talk to a
25 DOL representative now, and committee guidance, I

1 assume that that's still something you want to do. You
2 have those reports, but I would ask that we keep this
3 relatively brief, so we can get back to the core
4 matters that we're discussing with the Assistant
5 Secretary.

6 So, Roberta, we got the reports that were
7 provided yesterday, and I think there were people who
8 had some questions about them, and I'm going to turn
9 this over to other committee members who may have
10 concerns.

11 Don, I think that you did yesterday express
12 some concern about having someone from DOL to address
13 your questions to.

14 MR. ELISBURG: I think we were interested in
15 finding out where DOL was and what they were doing,
16 other than getting a chart. I don't know if you got
17 the five minute summary, Roberta, of where you are and
18 what's going on.

19 I do have some question about the chart which
20 I can get to.

21 MS. MOSIER: Yes.

22 MR. ELISBURG: Your chart that you sent us?

23 MS. MOSIER: Yes. Yes, I do. I have it in
24 front of me.

25 MR. ELISBURG: One of the questions I have on

1 the chart is where you have number and types of claims
2 received.

3 MS. MOSIER: Hm-hmm.

4 MR. ELISBURG: Where you have the list of the
5 -- by different kind, cancer, beryllium, so forth.

6 MS. MOSIER: Right.

7 MR. ELISBURG: Can you -- do you have any --
8 can you tell us in terms of the claims you've paid
9 where those paid claims fit within this list of claims
10 received? That is, how many are the cancers, how many
11 are berylliums, how many are silicosis, how many are
12 RECA and so forth?

13 MS. MOSIER: I could get that information. I
14 do not have it at my fingertips. There are some in
15 each category. We paid a large number of special
16 exposure cohort cancer claims. So, there's a lot that
17 have been paid in that category.

18 We have made -- actually, let me think a
19 minute.

20 (Pause)

21 MS. MOSIER: I could get -- I could probably
22 get something that would address that, but just to give
23 you kind of an idea, we have approved a fair number of
24 beryllium sensitivity claims. Those would be just for
25 medical benefits. We have approved a large number of

1 CPD claims. There have been a very small number of
2 silicosis claims that have been approved to date.
3 There have been a large number of RECA payments made,
4 over 2,000 is my recollection on that.

5 The thing to keep in mind with these number
6 and types of claims received, this -- these numbers are
7 as self-reported. In other words, this data is based
8 on what the individual claimants -- when they send in
9 the initial claim forms. So, some of the silicosis may
10 in fact actually be RECA claims rather than silicosis
11 due to mining in tunnels in Nevada and Alaska, and some
12 of the cancer claims actually may also actually be RECA
13 claims because there is lung cancer included in there.
14 So, there's some overlap in some of these categories.

15 If you would like specific numbers for each
16 of these in terms of people that have been paid, I
17 mean, would you also be -- we have also denied a fair
18 number of claims --

19 MR. ELISBURG: Yeah. I think we'd be
20 interested in both.

21 MS. MOSIER: -- in some of these categories.

22 MR. ELISBURG: Yeah. I think we'd be
23 interested in both.

24 MS. MOSIER: Okay. I'll have to see what I
25 can find. I don't have that at my fingertips.

1 MS. SPIELER: Other questions or issues for
2 Roberta that the committee members would like to raise?

3 (No response)

4 MS. SPIELER: After DOL finishes the
5 processing of a claim, how do you transfer the claim
6 back to DOE for processing if there's Subtitle D claim
7 as well?

8 MS. MOSIER: We don't. That process has not
9 been worked out yet. We have been in discussions.
10 What had been envisioned was that DOE was going to
11 obtain a release from each claimant under Subtitle D
12 and submit that to us and then we were going to give
13 them a copy of the case file or copy of whatever
14 records they requested on that particular case file.

15 So, we don't at this point have an automatic
16 referral to them.

17 MS. SPIELER: My understanding from
18 information that we've received from DOE during the
19 course of our advisory committee meeting is that over
20 10,000 claims are essentially dual file claims, and
21 that DOE is assuming that DOL is working on those, the
22 employment history, exposure data, and that they will
23 be relying on the information that's developed by DOL.

24 It's been the position of this committee from
25 the very beginning that it's critical from claimants'

1 points of view that there be coordination between these
2 two agencies, and I quite frankly as chair of the
3 committee would like to know what you are doing and
4 what DOE is doing in order to maximize that level of
5 coordination.

6 MS. MOSIER: Well, we're developing the
7 claims for our part of the program. We are going ahead
8 and getting employment verification if they're claiming
9 a condition that's payable under Subtitles D and C.

10 We have gotten a number of claims from
11 individuals who are claiming other types of conditions,
12 such as asbestos and that sort of thing. At DOE's
13 request, we are not developing the employment on those
14 claims. We are making a decision based on their
15 having/not having a covered condition.

16 So, a lot of the claims that we have denied
17 to date have been cases in which they've claimed a non-
18 covered condition.

19 MS. SPIELER: Let me suggest to you that from
20 the outside of the Beltway, there isn't a lot of
21 distinction made by people between different agencies
22 of government and what your responsibility is to the
23 people of this country, including the claimants in
24 these programs, and that therefore whoever's
25 responsible for the implementation of the EEOICPA has

1 the responsibility to make sure, and this has been a
2 position of this committee all along, that there's a
3 program in place that isn't one in which you're acting
4 as if the Federal Government has one program and the
5 states have another which is the way Black Lung works,
6 but in fact you have a unified federal program which
7 provides benefits, some through a DOE-administered
8 program and some through a DOL-administered program,
9 and it's extremely important to the members of this
10 committee that that be done in a way that's most
11 efficient from the claimant's point of view.

12 So, again, I would ask, on behalf of this
13 committee, that people at the Department of Labor and
14 people at the Department of Energy develop a
15 cooperative arrangement that allows not only for
16 protection of privacy from the point of view of the
17 claimants but also maximizes the efficiency in the
18 processing of these claims, and it doesn't sound to me
19 like that's what's going on.

20 MS. MOSIER: Well, I was getting into some of
21 the detail of how we process the claims. We are -- you
22 know, when -- once the DOE process is underway, when we
23 get a request from the Department of Energy, I mean, we
24 don't know that they have a claim until they let us
25 know that they have a claim under the state program.

1 When they know -- when they let us know that
2 they have a claim and that they would like copies of
3 any relevant evidence that's in our file, we'll be
4 providing that to them with the appropriate Privacy Act
5 release. So, I mean, --

6 MS. SPIELER: I think the Assistant Secretary
7 has something to say.

8 MS. COOK: I would just tell you that this is
9 an issue for us and that is why we -- in fact, we have
10 a phone call even tomorrow afternoon with the Deputy
11 Secretary involved with all three agencies, although we
12 don't have one right now, so I'm on these phone calls
13 and working this issue specifically and talking about
14 this issue.

15 We definitely do not want to continue in this
16 situation. We don't want it to be that difficult. So,
17 we've got to figure out a process that gets us
18 somewhere from DOE trying to sort through how do you
19 ask for that to get to DOL to getting something more
20 automatic happening.

21 So, not only -- we -- when I spoke earlier
22 about we're in a different role than DOL,
23 administrative role, but we are -- these are our
24 workforce and our workers, and we need to make this
25 work better and that is a goal of ours. So, we've got

1 to make this work. It's something that Josh works with
2 on a daily basis, also, from the information exchange
3 mode, but we also have to get it from the actual claims
4 mode to make this work effectively. So, it's my action
5 to make that happen.

6 MS. SPIELER: John?

7 MR. BURTON: I think this committee was
8 somewhat aghast last year when we visited the resource
9 center in Denver and found that staff there did not
10 view their role as essentially having dual
11 responsibilities, and I think our feeling was that
12 there ought to be perhaps even cross-training and a
13 single person ought to have responsibility at that
14 early stage of processing these for both sides because
15 otherwise we're going to be -- this is really obviously
16 a very distressing report that we're hearing from you,
17 and I wasn't personally blaming you, but it sounds to
18 me like these are two tracks that are not integrated in
19 any sense that would be helpful to the workers, and I
20 think that's tragic.

21 MS. MOSIER: Let me just say that, you know,
22 we also recognize the need for streamlining and
23 cooperation and, you know, we certainly do not want to
24 place an undue burden on any claimants.

25 Part of the difficulty with pursuing one

1 process from the very beginning is that we have been up
2 and running and processing these claims. It was not a
3 clear set of guidelines for the resource centers to
4 follow with respect to the DOE claims from the
5 beginning and that was part of the difficulty of
6 coordinating the two programs.

7 MS. SPIELER: As an advisory committee, we do
8 understand that the beginning of a program is often
9 quite difficult, but we also perhaps, as beneficial
10 outsiders and interested people in this program, think
11 that it's incredibly important that you not become
12 rigidified around start-up problems and that the on-
13 going program that will be on-going for a number of
14 years, I think everyone agrees, be one that is
15 efficient from both the claimants' and bureaucratic
16 point of view, and I think you're actually managing to
17 achieve neither of those goals, and so we would
18 encourage these discussions among these agencies in
19 order to maximize that efficiency with an eye toward
20 benefiting the workers who were in fact intended to be
21 beneficiaries of all of the subtitles of this statute,
22 and if this committee can be of assistance in any way
23 in that process, we would be happy to do that.

24 In fact, in addition to the issues that John
25 mentioned that we discussed last time, was the

1 electronic sharing of the information as it was
2 developed by one department or the other, and I
3 continue to feel that as electronic sharing this kind
4 of information for these kinds of purposes in the
5 workers compensation world has expanded, that you
6 should be building on that experience and not
7 establishing barriers to the sharing of information
8 that are ultimately going to be in no one's interests.

9 So, if we can be of any assistance in helping
10 that to occur, we, all of the members of this
11 committee, would be happy to do that.

12 MS. MOSIER: Okay.

13 MS. COOK: Let me just say again, this is, in
14 my opinion, DOE's action and we are looking at
15 everything from electronic sharing to, as I said a
16 couple of weeks ago, all the resource managers who are
17 in here, to make sure that we really further that
18 dialogue at least being joint DOL/DOE offices and
19 serving both purposes, and then they're coming back in
20 just as soon as the rule gets finished so we move on
21 with that. We intend to continue with that dialogue
22 with them, to keep them moving in that direction, that
23 it is a joint office, and they work both sides of it
24 and to help move that.

25 It absolutely has to happen. There's no

1 doubt in my mind either, and I share your concern, and
2 there has been progress made. I have to say that.
3 Those resource center folks understand, I think, the
4 full aspects of the statute much better than what my
5 first indication was because they're up and moving on
6 the DOL portion, but the other part, they didn't really
7 understand real well. But we're getting there.

8 MR. ELISBURG: I just wanted to ask. I
9 thought, maybe when we were out at Colorado, that we
10 did recommend or talk about whether or not at the
11 initial intake, they could get whatever consents they
12 needed to share information right up front, so that you
13 -- because a claimant coming in is not really concerned
14 about Part A, B, C or D. All they want is where do I
15 fit, and that there would be no reason that you
16 couldn't get some kind of an agreed consent form so
17 that a year later, you're not going back and forth
18 about whether you can share information.

19 It seems to me we discussed this at some
20 point, that that was part of the one-stop shopping,
21 don't put people to the multiple burdens and the
22 multiple sign-offs.

23 MS. COOK: I understand. Like I said, I
24 wasn't going to the -- I wasn't here last Fall, but it
25 was unclear where things even went last Fall in the DOE

1 part and that clarity is coming into place now, that we
2 are committed to do that, and as I said, at the Deputy
3 Secretary level within the agencies, there's a
4 commitment to do that, and I've talked with Cam Finley
5 and I've talked with Claude Allen at the other two
6 agencies. I mean, we're committed to make this work.
7 It's going to work. We're not going to get stuck in
8 these start-up problems.

9 MS. MOSIER: And I do believe that a consent
10 form at the initial intake is part of what is
11 envisioned. In our biweekly records meetings, inter-
12 agency records meetings, we have -- you know, we've
13 discussed such a form. That was what I believe was
14 envisioned, that that consent form would -- they would
15 do it right then when they were completing the claim
16 forms and so that would all be taken care of at the
17 point where they made the application.

18 MS. SPIELER: But I gather it's not yet being
19 done in 29,000 claims. So, we have some reason for
20 considerable concern here.

21 MS. MOSIER: Yeah. Well, a lot of the 29,000
22 are not DOE employees who would be part of the OWA
23 Program.

24 MS. SPIELER: We know that 11 -- 10,300 of
25 them are, however.

1 MS. MOSIER: Okay.

2 MS. SPIELER: So, that at a minimum, we're
3 talking about 10,000, and my guess is it's going to be
4 more as we go forward.

5 Are there other questions with regard to DOL
6 that people would like to raise?

7 MR. ELISBURG: I was wondering if they had
8 anything to tell us.

9 MS. MOSIER: I have not been -- I'm not sure
10 what all has been discussed so far in the meeting. One
11 thing that we're very excited about is the fact that
12 the NIOSH regulations are final now and that we're
13 starting to get dose reconstructions back from them.
14 We've gotten, I believe, one so far. We went ahead and
15 made a decision on that claim. You know, one thing
16 that was of great concern to us was not being able to
17 move forward on the claims in which dose reconstruction
18 was required and that will start moving now. So, we're
19 excited about that.

20 MR. ELISBURG: One down, 4,916 to go.

21 MS. MOSIER: Yeah. There's a lot more to go,
22 and we continue to make referrals to -- new referrals
23 to NIOSH every week.

24 MS. COOK: I'm sure they're delighted.

25 MS. MOSIER: They are. They're just so

1 delighted. They have a lot of them to look at.

2 MS. COOK: Let me just comment on the NIOSH.
3 I have talked with the folks, NIOSH folks. You know,
4 these are people that are used to doing R&D work, you
5 know, and they're in production mode, and their
6 management is acutely aware of that.

7 Trying to keep them focused on this is not a
8 research project, this is a production mode, it's kind
9 of like getting Los Alamos to do production work, you
10 know. They're research guys, but I am convinced that
11 they're going to rise to the occasion and do a very
12 good job with this.

13 MS. SPIELER: I actually think that, in
14 addition to the member of this committee who works for
15 NIOSH, the rest of us do harbor some hope that they
16 will rise to this challenge.

17 MR. BLEA: For DOL, do you have a breakdown
18 of numbers, the pay-out that you paid out to claimants,
19 from what state they're from? Do you have a breakdown
20 like that?

21 MS. MOSIER: I do not have that in front of
22 me. I just think we gave you the total numbers. I
23 could also get that.

24 MR. BLEA: We would appreciate it.

25 MS. MOSIER: It's not something that we do

1 routinely.

2 MS. CISCO: Yes, and it's interesting in that
3 breakdown because, you know, as I said before, you'll
4 have somebody, like at Rocky Flats, that got paid not
5 because they worked at Rocky Flats, not because they
6 are there now, but because they happened to have worked
7 at Paducah. So, it's kind of a convoluted sort of
8 statistic, too.

9 MS. MOSIER: Right.

10 MS. COOK: But those numbers exist.

11 MS. MOSIER: Yes, they do. I just don't have
12 them at my fingertips.

13 MS. KIMPAN: Some of the folks on this
14 committee know, and I know you know, Ricky, that right
15 now, since, as Roberta said, the claims they've been
16 able to pay, of course, are gaseous diffusion
17 presumptive cancers. So, that's going to be Kentucky,
18 Tennessee, and Ohio, and then the folks with beryllium
19 disease, generally one-dose reconstruction, unless
20 there's some silicotics hiding in there, you can sort
21 of narrow it down to where we had beryllium and where
22 we know that is, and that's Rocky and some Tennessee,
23 etc. So, that's how it's looking right now at this
24 point, not about claimants, of course, but the pay-
25 outs.

1 MR. BLEA: Right.

2 MS. SPIELER: Additional questions for DOL?

3 (No response)

4 MS. SPIELER: Okay. If you could provide
5 that information to the committee staff so that it
6 could be distributed to the committee, full committee
7 members, I would appreciate it, Roberta.

8 MS. MOSIER: Okay.

9 MS. SPIELER: And thank you very much.

10 MS. MOSIER: You're welcome.

11 MS. SPIELER: All right. Good-bye.

12 Okay. Let's get back to the Subtitle D. We
13 were discussing the issue of essential TPA versus not
14 on the claims in which we have agreed that there's a
15 payer and the remaining issue that occurs to me is the
16 question of the permanent partial disability evaluation
17 process which is also not on the flow chart but is of
18 critical importance within each state system and is
19 obviously quite state-based, and in those states where
20 it isn't a pure wage loss system, it's very likely to
21 involve some kind of impairment evaluation process, and
22 as Iris points out, although you can have a TPA do
23 this, there may be arguments about it between the
24 claimant and the TPA as to what the appropriate
25 permanent partial disability rating and pay-out would

1 be, and often in states that's done through not only a
2 dualing doctors process but also a compromise and
3 release process in which -- and generally when that
4 occurs, claimants are represented by attorneys.

5 I'm wondering if the committee has any
6 suggestions or thoughts on how to handle this process,
7 again talking about those claims in which we have a
8 willing payer who's not contesting causation, has
9 accepted liability on the claim and is willing to move
10 forward in the most forward-thinking manner possible.
11 What should be the process that DOE should be thinking
12 about, advising contractors about, or, alternatively
13 and as put by one of you more elegantly, through a TPA
14 model?

15 MS. POST: I was just thinking. One of the
16 things that you could do, if these were assigned to a
17 TPA, is instead of going through litigation process,
18 what you could do is just go through a mediation
19 process where you agree that you just have some kind of
20 mediation agreement where you all -- people come
21 together. They don't have to be represented by
22 counsel, they can be, and that a resolution is reached.
23 Of course, that infers or implies that there's some
24 kind of due process and you're going to have it
25 binding.

1 I mean, there's a whole lot of issues with
2 mediation, too, but at least you would keep -- you'd
3 control the time frame. You'd keep it out of the state
4 agencies, and you would have more control on exactly,
5 you know, what the outcome's going to be and exactly
6 the time. The time is going to be really important.

7 MS. COOK: I was just going to say, Kate's
8 not here. I think that's a really good topic to do as
9 a state agreement, to see if they will, you know, agree
10 that we just do a mediation because I want as much as
11 possible to keep this out of litigation.

12 MS. SPIELER: Although I'm not sure you can
13 waive on claimants' behalf the right to appeal into the
14 state system, should they choose, and so what you're
15 essentially saying is we'll do the best we can and for
16 those small -- hopefully small number of claims where
17 there continues to be disagreement, I don't think you
18 can legally foreclose on behalf of the claimant through
19 the state agreements their rights under state process.

20 MR. WAGNER: You can provide advocacy and
21 support up to the point of when the claimant would have
22 to make a decision to pursue their own litigation, and
23 I think that with vigorous advocacy, it really would be
24 a workable system and minimize the number of people who
25 would fall off the edge.

1 MR. BURTON: I guess one question would be
2 whether there is some role for the physicians panel in
3 this regard. If you want to get, as an example, a
4 permanent disability rating using the AMA Guides, not
5 that I want to endorse those guides because, as most of
6 you know, we've written articles criticizing the AMA
7 Guides, but as a practical matter, that's probably the
8 only game in town, and I'm not necessarily -- I'm not
9 endorsing.

10 I'm just kind of raising this as a question,
11 as to whether or not when we have somebody who's
12 potentially a PPD claim, whether that kind of role for
13 the physician panel would be useful, because otherwise
14 the mediation process, it seems to me, is going to be
15 starting from a very unclear set of facts probably as
16 to how seriously disabled this person is.

17 Obviously state workers comp agencies, if it
18 got to that stage, typically would have a way to
19 resolve disputes over extended disability, but we're
20 trying to stay away from that, and certainly to the
21 extent you're using a TPA, I would think that
22 information would probably be useful. So, I don't know
23 whether that's something that's --

24 MS. MUELLER: I mean, this is Kathryn, it's
25 kind of difficult because after all, the states have

1 their own way of resolving it, and we, for instance,
2 have a separate division and panel that knows the rules
3 in the state about how it's supposed to be done for
4 that state, and so if you're taking physician panels
5 has a general rule, they may not know the rules for
6 that particular state, you know. Therefore, what they
7 say could or could not be useful.

8 I mean, I guess if we were going to try and
9 create a separate mediation system or a step to go
10 through first to try and avoid litigation, I think you
11 certainly want to encourage the TPA to have more than
12 one medical opinion when they went into mediation
13 probably. I mean, I would think, and I don't know
14 whether the physicians panels are the right place to
15 get it. That's a question.

16 MR. BODEN: Comment about this and then
17 another thought. The other issue is, and I don't know
18 how the AMA Guides work exactly for the particular set
19 of illnesses that might arise, is whether somebody
20 actually needs to be physically seen by a physician in
21 order to do this. For some things, they do. For some
22 things, they don't. For back injuries, for example,
23 the physician would have to see them.

24 But I have another suggestion, whatever the
25 configuration of medical evaluation might end up being,

1 and that is, that whatever disability rating is
2 initially decided on through this process, that it be
3 part of the process that payment for that disability
4 rating essentially immediately be forwarded to the
5 claimant and that that payment be made, even though
6 later on, there might be a dispute and the claimant
7 might want more.

8 There are two reasons for that. Number 1 is,
9 I think it will greatly increase satisfaction with the
10 process for people to get something before this issue
11 is entirely resolved, and two is that it actually might
12 lead to fewer people getting ahold of attorneys because
13 they haven't gotten any payment.

14 MR. BURTON: Yeah. But I'm not sure I
15 understand how this would work, Les, because let's
16 assume the physician panel did an AMA Guide rating.
17 Well, there's -- every state does -- is going to have a
18 different way of translating that into dollars, and so
19 just sending to the worker a rating is just going to
20 mystify that worker and almost certainly have that
21 worker go get a lawyer to understand what this is
22 about.

23 MR. BODEN: Oh, sorry. Let me clarify what I
24 meant. I obviously didn't say it clearly.

25 What I meant is that whatever the -- let's

1 say it was an AMA rating just for argument's sake,
2 although it might not be. Whatever the rating was that
3 the physician panel came up with or somebody else came
4 up with, if it was decided the physician panel wasn't
5 the route, that rating would be forwarded to the TPA
6 who would translate it into dollars, who would send out
7 a letter and a check within two weeks of receiving the
8 rating, let's say, and the letter would say the
9 physician panel has given you permanent partial
10 disability rating of 25 percent, which in the state of
11 Iowa translates into \$500, and here's your check for
12 \$500.

13 So that, obviously whatever the amount is.
14 Sorry for picking on Iowa. And at that point, the
15 person could decide they weren't satisfied with that
16 and could go to get more, but at least they'd have
17 something. I mean, quite frequently, what happens is
18 the payment doesn't get made until all the issues are
19 resolved and that's a source of some dissatisfaction on
20 the part of injured workers.

21 MR. ELISBURG: It occurs to me that this
22 entire discussion might appropriately lend itself to
23 whatever subcommittee we have that deals with this
24 because this is a very complicated issue that will go
25 directly to perhaps what may be these memos of

1 understanding with the states.

2 I think there is a question in my own mind as
3 to whether the physician panel is the appropriate place
4 to do the disability rating or not. I don't know that
5 that's where --

6 MS. SPIELER: Well, let me ask for some
7 guidance here.

8 MR. ELISBURG: It just seems to me that there
9 are a lot of really healthy issues that some people on
10 the committee may be able to sort through.

11 MS. SPIELER: Yes, I agree. Here's the
12 question that I have for the committee, and I think in
13 the -- in light of the more open and collaborative
14 model we appear to be agreeing on, it does make sense,
15 I think, for this to go to a subcommittee of this
16 committee to really think about and assist the
17 Department in thinking about and then bring it back to
18 the committee at our next meeting, if that makes sense.

19 So, the question is: which committee, and
20 here's where I actually think this kind of affects the
21 deliberations of the Claims Processing Administration
22 Committee. I think it affects the medical expertise
23 that's on the Medical Panel Subcommittee, and also, I
24 think, on the State Agency Relations.

25 So, I ask for guidance from this committee as

1 to where to refer this issue and how to proceed with
2 it.

3 MR. BLEA: My only suggestion is rather than
4 -- whatever the subcommittee wants to do, that's fine,
5 but rather than waiting till our next meeting to act on
6 it, I would rather see that after the committee meets,
7 comes up with a draft, that it be sent to the rest of
8 the committee and let's just vote on phone or on-line
9 and --

10 MS. SPIELER: No problem with that. No
11 problem.

12 MR. BLEA: That's right.

13 MS. SPIELER: No, I understand that. And it
14 may be that it doesn't need a formal vote, that if we
15 can assist the Department in coming up with an
16 appropriate way to do this, you'll just do it, and we
17 don't have to -- but in any event, the question's on
18 the table. What subcommittee or is this some new
19 formation?

20 MR. BURTON: I think it's a new formation. I
21 think it doesn't neatly fit into any of these
22 subcommittees. It seems to me it cuts across and that
23 we ought to really think about an ad hoc committee
24 perhaps for this issue and with representations from
25 state agencies and so on, and I don't know that we want

1 to pick the members right this instance, but I think
2 very quickly, you ought to do that.

3 MS. SPIELER: We might want to pick a chair
4 right now. Are you offering?

5 MR. BURTON: I would do that. Obviously I've
6 got another subcommittee that I have to make sure I
7 don't have a plate that's more than full in two
8 minutes, but yes, I would do that.

9 MS. SPIELER: Thank you, John.

10 So, we will poll the committee, Judy, over
11 the next, say, week and establish a subcommittee that
12 specifically deals with the claims processing
13 subsequent to the physician panel question, resolution
14 of the causation question.

15 On those cases in which the flow chart shows
16 a yes, we're talking about what happens next. Is that
17 -- not just, you know, who does the PPD evaluation but
18 essentially the processing of the claim and what
19 happens next. Okay? And committee members should
20 expect to weigh in on whether they want to be involved
21 in that discussion over the next couple of months.
22 Okay? Good.

23 The discussion, I think, will end in two
24 weeks, but the committee should be up and running
25 within the next couple of weeks, the subcommittee, and

1 then the subcommittee should decide whether they want
2 to have a meeting or meetings by telephone or how to
3 proceed. Is that okay, John? Okay.

4 MS. KIMPAN: Madam Chair, can I toss in a
5 one-line fact? I believe Iowa's the only state in the
6 country that does adhere to the recommendations of the
7 Workmens Comp Commission from the '70s in terms of
8 adequacy and sufficiency of benefits.

9 MS. SPIELER: However, because of the way --
10 yes, in defense of Iowa, but on the other hand, Iowa's
11 use of statute of limitations and other procedural
12 mechanisms for blocking claims is also admirable from a
13 financial point of view.

14 MS. POST: Only when raised by employers or
15 carriers.

16 MR. BODEN: So, what's the state equivalent
17 of ad hominem attacks? Anybody know that well enough?

18 MS. SPIELER: I think around this table, we
19 could come up with ad hominem state attacks on every
20 state in the country with regard to the intricacies of
21 their workers compensation systems.

22 MR. WAGNER: Ad stadium.

23 MS. SPIELER: Moving us ahead because we're
24 way behind here, there are a number of issues even in
25 those situations, and again I'm sticking to those

1 situations where we have a payer and I'm indulging my
2 optimism about congressional actions so that we won't
3 actually have to have the other conversation, but with
4 regard to the state agency relations and the memoranda
5 of understanding, in those situations where there is a
6 willing payer, and you do it either through your
7 contractor, direct contracting, or you do it through a
8 TPA -- you know, a general contract, what are the
9 issues that remain with regard to states, and what is
10 the intent of the Department or what are the concerns
11 of the Department that we might be able to help you
12 think about with regard to state MOAs?

13 MS. KIMPAN: Pardon me. Certainly as soon as
14 the rule's out and we're in a position to look at what
15 the template state agreement will be, then we will
16 generate at DOE. With Bev's encouragement, we'll
17 engage Iris's Subcommittee on State Agency Relations
18 and hopefully the full committee.

19 I don't know, Emily, that -- I know there
20 have been concerns out there. DOE's attorneys have
21 said clearly we must have these agreements in place to
22 empanel our providers, and I've not received any
23 indication from any state that that's a problem.

24 I know that the states are very willing to
25 work with us to make certain we have these agreements

1 in place.

2 MS. SPIELER: I understood all that, but I'm
3 asking the next level of specificity actually. For
4 example, if you have claims that are -- you have a
5 willing payer and an employer who's willing to pay
6 them, are there issues about what kinds of claim forms,
7 what kinds of issues the state may be concerned about
8 on a state-specific basis with regard to the processing
9 of claims? What about this issue of mediation? How
10 are the -- to what extent in those states, in all of
11 these states, where there's a willing payer, self-
12 insured employer, does it get entirely left up to the
13 employer, the easiest model for DOE to deal with, and
14 to what extent does the state have certain requirements
15 with regard to the processing that DOE needs to be
16 aware of, and to what extent, if that's true, can you
17 work out an agreement in advance that expedites this?

18 MS. KIMPAN: We're not currently aware. Now,
19 as you know, we abruptly stopped our negotiations on
20 the prior form of the state agreement, but we're not
21 aware of any barriers and expect that any such barriers
22 would come forward in these negotiations and would hope
23 the committee would be involved as we proceed, but it
24 is the case in each state that if we have a willing
25 payer and someone has said they accept my claim and

1 they accept that's compensable, every state said we
2 have a way to determine things like permanency.

3 Now, those ways may be unpalatable or
4 difficult with all the attorneys and adverse exams, but
5 each state was very confident that this is in their
6 terms a small number of claimants and they're
7 comfortable that the existing state systems can resolve
8 these issues.

9 Now, I know that this committee's aware that
10 there's something beyond the initial acceptance of
11 causation and that's a very important discussion about
12 disability and permanency, but in our discussions with
13 states, we didn't get further than the states agreeing
14 that they were content with their existing systems to
15 resolve issues related to accepted claims.

16 MS. SPIELER: Let me ask. I know there's
17 optimism about getting the physician panel rule out,
18 but I also understand that it's been pulled back to
19 DOE. We'll have to go through OMB before it comes out
20 and then there will be a 30-day period before.

21 Seems to me and here, I'm speaking for myself
22 and not the committee, that it would be very important
23 to be in touch with the states with a lot of claims and
24 this isn't about negotiation. This is about
25 information gathering to sort of go through a list of

1 the issues that might arise in accepted claims,
2 determine what those are, be ready to make proposals
3 with regard to negotiation.

4 I don't necessarily agree with the general
5 counsel's view on you can't do this till the rule is
6 out, but I understand that I've been outvoted on that
7 by people with more influence over this program. So,
8 but it does seem to me that there's a fair amount that
9 could be explored, and I would ask -- and a couple of
10 us were talking about this yesterday.

11 Do you know, for example, of these 11,000
12 claims, how they break down by state jurisdiction so
13 that you can prioritize where you're entering into MOAs
14 and you're doing your information gathering?

15 MS. KIMPAN: Yes, we can look at where the
16 claims are from, and, of course, not surprisingly, the
17 states that were in the Task 2 report, the states in
18 which we have major facilities are the states and the
19 states with whom we began negotiations when our
20 original NOPR went out, the states we've been focusing
21 on.

22 I've had discussions with administrators in
23 many more states than that. We have 32 states that
24 have or have had DOE facilities, and I have been
25 continuing to brief administrators and keep that

1 dialogue open. I met with several administrators at
2 the Western Association a hand full of weeks ago. So,
3 that dialogue is continuing. We're not in any formal
4 negotiations with state agreements, but we are still
5 currently open and available, and I'm in touch with the
6 administrators. So, if they believe there's any
7 problem that will arise or implementation issues that
8 will arise, I expect they'll be in touch with us.

9 MS. SPIELER: Have you walked through with
10 each of them, you know, sort of the claims processing
11 so that you -- rather than asking them, do you see any
12 problems in general, have you walked through a process
13 with them so that you can determine where there might
14 be problems in that state that they might not see in
15 response to a general question?

16 MS. KIMPAN: I have not in as great a detail
17 with the new rule as I will. I certainly did in detail
18 what we envisioned as of last Fall, and they have been
19 -- I have been briefing them prior to that even on the
20 Subtitles A, B and C portions. So, yes, I believe that
21 the administrators that haven't changed are up to speed
22 on that and some are even aware that there are
23 reconsiderations of the process going on. So, yes.

24 You know, it's been like with this committee
25 very difficult because I can't discuss the details of

1 the rule, but I can say here's an issue, like permanent
2 partial disability, how would you resolve that? So,
3 I've spoken in those types of terms, but I'm not able
4 to say exactly what the rule will look like in part
5 because I don't know.

6 MS. SPIELER: But actually, I'm not sure I
7 understand why what the rule looks like matters in
8 terms of the post -- if DOE says we're accepting this
9 claim, the physician panel has found causation, we're a
10 willing employer, it doesn't make any difference what
11 the rule says about the process prior to that with
12 regard to what you need from the state, and so, I don't
13 actually understand the characterization of the process
14 in terms of the contingency on the final rule language.

15 MS. KIMPAN: It's sort of, you know, the
16 variations in the proposed rule, all the way from
17 making sure it exactly fits the criteria of that state
18 to a uniform standard. Okay. It would make a
19 difference on how we'd talk with them about whether
20 they're going to get something that exactly looks like
21 any other thing that comes into their state versus
22 something that comes in that says, you know, we, a
23 federal panel, says this is okay, it may not exactly be
24 what your state does, but we think it's okay and our
25 contractor's willing to pay, what do you do about it?

1 So, there is some nuances to it from that respect.

2 MS. SPIELER: Well, okay, but if we assume
3 that there is going to be some kind of uniformity of
4 the standard used by the medical panel, then the
5 conversation with the state should be able to go
6 forward.

7 John says that I'm missing something. Let me
8 concede to him.

9 MR. BURTON: I think the comments you just
10 made here probably come close to what I was going to
11 say. If the panel said that, I'd say this bizarre
12 notion that they would be applying the state-specific
13 causation standards and that was the outcome of the
14 physician panels. That's a much different kind of
15 information that goes to the state than if we have a
16 general causation standard because then you've got to
17 figure out with the states how do they deal with the
18 fact that you haven't looked at the state-specific
19 characteristics?

20 MS. SPIELER: There is a nuance there, but I
21 think in a lot of states, that if the employer says
22 it's good enough for me, then I'm not sure that it
23 matters and that would be a question that might be
24 asked of the states.

25 But in any event, then what I said holds.

1 The discussions with the states and the claims that are
2 accepted as payable claims, then the question is, how
3 do we expedite that through the state process, and
4 again I would encourage those discussions go forward.

5 MS. COOK: And I think where we are is we
6 don't see any showstoppers at this point, but we've got
7 to get down to the actual negotiations.

8 MS. POST: I would just say that initially
9 when we talked about the MOUs with the state, there was
10 requests from DOE and Kate and others that somehow
11 states put these claims aside and put them on what I
12 would call a fast track, either -- if they did happen
13 to go into litigation, which I understand we're not
14 talking about that currently. Even if whatever process
15 you want those claims to go through in the state
16 system, I don't know any states that can separate those
17 claims out and are going to put them on an expedited
18 track.

19 MS. SPIELER: Yeah. I think that it's too
20 bad Glenn isn't on the phone today, but I think when
21 Linda Rudolf was also still on the committee, that
22 there was a general feeling of how could we possibly in
23 California, and which certainly is understandable given
24 the volume of claims that they in general face, but in
25 any event, right now, we're specifically focusing on

1 those situations in which there isn't going to be -- it
2 isn't going to go into full litigation presumably, and
3 what we're looking for for these claims from the state
4 is let's make sure there are no roadblocks to letting
5 the employer do the right thing, given the physician
6 panel support of a claim, and I think that we should --
7 that it's very important that the Department stay
8 focused on that as the goal in those -- in that set of
9 claims.

10 Les Boden has to leave at 11:00 and asked if
11 we could spend two minutes talking about Performance
12 Evaluation issues, the subcommittee which he chairs and
13 which I assume again we will be turning over to
14 subcommittee work after this meeting.

15 Les?

16 MR. BODEN: Yes, I really think we'll be two
17 minutes, barring any surprises.

18 Basically, the Performance Evaluation
19 Subcommittee did some initial work, designed some
20 initial ideas about where we'd like to go, but we've
21 been on hold up until now because we've neither been
22 able to see the template for the information gathering
23 in a general sense nor specifics about whatever claim
24 flows there are; that is, what the claim flows are per
25 center over a period of time, you know, recognizing the

1 fact that they're all stopped before the physician
2 panel at this point, but even, I think, that
3 information would be of use to us.

4 So, on the assumption that we'll get that
5 information in fairly short order from you, then I
6 think the committee will share the information and
7 discuss where to go from there.

8 MS. COOK: Yeah. We want to get back on
9 track with you on that. Two things. One is, we want
10 to get to the information we have now, and then what we
11 want to come up with is a real good set of performance
12 metrics that address both things.

13 One is the adequacy and the timeliness of the
14 process and the other is the cost-effectiveness
15 process, which gets back to what Don and I were talking
16 about. Which things -- you know, are we just doing
17 data dumps and then leaving it to a very complicated
18 process to sort through everything or are we really
19 focusing in on what's important, and we need to have
20 metrics to be able to understand that.

21 MR. BODEN: Now, who specifically should I
22 get in touch with about this? Should I get in touch
23 with your contractor, and will he get the okay in terms
24 of sharing things, or what person?

25 MS. COOK: Actually, let's focus that with

1 Claudia and just have her --

2 MR. BODEN: Okay. Perfect.

3 MS. COOK: Okay.

4 MR. BODEN: Great.

5 MS. COOK: And she will pull in everybody
6 else she needs to help get all the stuff you need,
7 because it will also include -- I want this bigger than
8 just our claims processing, I also want all the
9 information she's sharing. So, it's the kinds of
10 things that Josh is doing with everything from, you
11 know, for the dose reconstructions, for the employment
12 verification. You name it, it's all aspects of it, but
13 that gives you a place to call.

14 MR. BODEN: If Claudia could just like send
15 me an e-mail with her e-mail address on it, then.

16 MS. SPIELER: Yeah. Len?

17 MR. MARTINEZ: I've been listening to what's
18 been going on obviously, and there's a significant
19 amount of work that the Department of Energy has done
20 in order to effect this program, a lot of good work,
21 and I understand that it is hard. Any new program that
22 comes up is hard, is difficult.

23 I also understand the issues associated with
24 dealing with other agencies and making sure that other
25 agencies are in fact doing their part in order to make

1 this a success. Unfortunately, DOE has the focus of if
2 this doesn't work, who's to blame?

3 I think this committee can provide the
4 Department of Energy with a significant amount of
5 assistance, and I believe the Assistant Secretary has
6 continually said I need your help and I want your help
7 and we welcome that and in fact will provide it.

8 I would make one suggestion while Les is
9 still here, before he departs, and that one suggestion
10 is that I would recommend that this committee submit to
11 the Secretary of Energy what our concerns are with
12 respect to the implementation of this Act and how we
13 believe that we can help the Department implement this
14 Act.

15 MS. COOK: I would welcome that and I would
16 agree with that. I will tell you that the Secretary
17 has spent a lot of quality time over the last two weeks
18 and at every meeting we had, he said, "I thought it
19 would get easier every time we talked. This just gets
20 more complicated every time we talk."

21 So, he will appreciate that kind of input.
22 He will appreciate knowing that there is an advisory
23 group that is looking at the same issues. He's a very
24 thoughtful and very thorough man, and you can ask some
25 of the people who've been here at midnight answering

1 technical questions from him. So, he -- just to get
2 what you all do on his radar screen now that he is
3 really very much in the middle of this, also, is
4 something that's very welcomed.

5 MS. SPIELER: Are you suggesting that I
6 should draft something, circulate it to the committee
7 members and then send it in?

8 MR. MARTINEZ: You got the process.

9 MS. COOK: I would suggest that it is very
10 much on the lines of, you know, we're your committee.
11 We're here to help and here's where we think the big
12 issues are, because he's trying to prioritize where the
13 -- there's so much that has to be dealt with here, and
14 he's trying to help us focus on the things that are the
15 biggest issues first to get things moving. So, knowing
16 from you that you're here and here's what you think the
17 prioritized list of what has to be dealt with first
18 would really help.

19 MR. MARTINEZ: I believe that one of the wet
20 noodles that he could push a lot harder than you can is
21 the inter-agency issue.

22 MS. COOK: Getting our Deputy Secretary
23 confirmed would help that, too.

24 MR. ELISBURG: Actually, I think if you
25 revisited the earlier letter that you sent to him and

1 the letter to Steve Cary, pretty much everything is --
2 that we've been talking about is in there. Perhaps it
3 needs to be recast in the light of, you know, where we
4 are now, but I'm not sure these issues have changed all
5 that dramatically.

6 I do think that the one part of this, Madam
7 Secretary, that I would urge all of you, if I could,
8 which I think is important in the context not just of
9 you but of the other people in the Department, that the
10 people on this advisory committee were asked to be on
11 the advisory committee because it was believed that
12 they brought some expertise to the Department of Energy
13 that the Department of Energy didn't have.

14 It's very frustrating to provide what we
15 think is some reasonable knowledge and then have the
16 Department say, well, that's very interesting, we're
17 going out and check it with a bunch of other people,
18 and we're going to get our own set of experts and then
19 we're going to decide whether your expertise is what we
20 want or not.

21 I'm suggesting that there are some things
22 where perhaps you have reached a point where you don't
23 need to second, third and fourth guess what you're
24 hearing from experts around, you know, who have some
25 knowledge of things that could be helpful to you.

1 We tried originally, I think, to try to lay
2 out a path that perhaps could have saved everybody a
3 lot of pain. You're now back on that path, and I think
4 it would be useful to just keep in mind that this is
5 not a committee that was set up to be your adversaries.
6 It was a committee that was set up, I think, to try to
7 help you move a process along that would be fairly
8 complicated, and it's just a suggestion as to how one
9 might look at what this particular advisory committee
10 is trying to do. We're not your enemy. I think we are
11 trying to be friends to this program, and I think it
12 would be -- you know, our advice ought to be kind of
13 received in that way.

14 MS. COOK: That's pretty cryptic for me
15 because I don't know exactly all the history, but I
16 will tell you, you probably don't want to talk to other
17 advisory committees I've worked with because, in fact,
18 my view of advisory committees is they are exactly
19 that. I tend to usually end up at the end of the
20 meeting where I've given you guys all more actions than
21 you ever gave me, and I don't mean that to be in a
22 negative way.

23 I do expect that you're the people with the
24 expertise on things that I really need advice on. This
25 is not easy to do. We're going to need some big help.

1 There is a reason that box ended where it did because
2 beyond that, it gets even more complicated.

3 So, I intend to fully utilize this advisory
4 committee, and I intend for you all to speak up when
5 you think we need to get additional help beyond that.
6 I want this to work, and I want it to work well and
7 quickly.

8 MS. SPIELER: Needless to say, we really
9 welcome that, and people on this committee who lead
10 busy lives outside the committee don't really want to
11 spend time. It's a waste of time. So, we're hoping
12 really to embark now on a seriously both efficient and
13 collaborative process where we can lend our expertise
14 to help the Department figure out how to go forward
15 with the program and anything we can do to do that
16 would be welcomed, I think, on the part of the
17 committee. There may be a limit, but we haven't
18 reached it yet.

19 Let me take us back because we're going to
20 run out of time, and I want to make sure that we kind
21 of close the loop on a number of issues that are still
22 out, I think, on the table, and here's where I think we
23 are at this point, that Les is going to be in touch
24 with Claudia and there's going to -- I think that you
25 all have -- I mean, Claudia and Bev, you probably

1 haven't seen what that subcommittee generated earlier
2 in terms of thinking about performance measures, and it
3 probably would make sense, Claudia, for when you e-mail
4 Les to ask that he provide you with anything that the
5 committee -- the subcommittee has previously generated
6 in thinking about these performance matrices and then
7 start from there because I think it went into a black
8 hole as it were.

9 It seems to me that we need to at least spend
10 a few minutes talking about the issue of what we do
11 about these claims, if there is not a fix by Congress,
12 because it seems quite clear from the discussions that
13 have been had so far, at least to me, our initial
14 proposal was, well, let's go to the states and see if
15 we can negotiate something about and to the contractors
16 and the insurers about figuring out about payment on
17 claims that would otherwise be blocked by a variety of
18 technical and other defenses in the state systems, and
19 there was discussion about convening a meeting of
20 contractors and insurers and perhaps that meeting
21 should be particularly focused on this issue, if
22 Congress doesn't act, but I know that Kate and John
23 have -- John is the subcommittee of that -- the
24 chairman of that subcommittee, and there was some
25 discussion about moving forward on that, and maybe it

1 would be useful to talk for a minute about what makes
2 sense in the context of these claims.

3 How much has the Department amassed
4 information with regard to those jurisdictions in which
5 claims would end up not being paid for lack of an
6 available payor or because insurance companies were
7 going to raise defenses on claims that are available to
8 them, to what -- you know, what -- now, I'm not asking
9 -- I understand we kind of made up the 50/50 number,
10 but actually I'm asking a different question now, which
11 is, it would require very careful review of state law
12 and practice to know where those kinds of defenses
13 would actually rise to the level of defeating claims
14 and where they wouldn't.

15 For example, I mean, I think that the outcome
16 in Iowa and Ohio would be quite different and what --
17 whether anything that can be done about the USIC
18 situation, the privatized situation, the closed site
19 situation, because we actually need to plan forward for
20 that as well in terms of, well, what happens after
21 Rocky Flats closes, and you don't have live contract
22 for people who might come forward later with latent
23 diseases under Subtitle D?

24 So, there's a whole mass of both research and
25 questions that relate to those kinds of issues, and I

1 would look for guidance from Kate, Bev, from you, from
2 John and from anyone else on the committee about how we
3 should think about that, if Congress doesn't move to
4 create a payment methodology for those claims.

5 MS. COOK: Let me just make one comment
6 before we -- to see what John envisions. That is the
7 plan, my understanding, is the meeting coming up to
8 meet with folks to sort of go through that. I
9 certainly don't think that that's all going to become
10 crystal clear after one meeting, but I guess I would
11 like to know from John what he thinks is possible in
12 this meeting that we have coming up with insurers and
13 such.

14 MS. SPIELER: Is that meeting scheduled?

15 MS. KIMPAN: It is not. John and I have been
16 looking at dates and looking at an invitee list which I
17 presume will be shared with the whole committee, but
18 it's based on --

19 MS. SPIELER: I would just urge, since it's a
20 subcommittee that's involved, that the subcommittee
21 members be consulted with regard to dates before you
22 pick one. Thank you.

23 We were given last night the response, Bev,
24 that you sent to Ted Strickland with regard to
25 questions, and in it, there's -- John and I were just

1 discussing this. There's reference to DOE responded to
2 the committee recommendations by letter on November
3 7th, and neither John nor I can remember ever seeing
4 this November 7th letter.

5 MS. COOK: I'll look for it. I wasn't in
6 November 7th, but let me look for it.

7 MS. SPIELER: Yeah. So, and I have to say
8 when I first read that last night, I thought, well, I
9 was actually in Europe on a Fulbright, and so I
10 thought, well, maybe I missed it, but now that -- but
11 it wasn't in my stack --

12 MS. COOK: Let me look for it.

13 MS. SPIELER: -- my secretary was reviewing.
14 So, if you could find that and fax it to all of the
15 committee members, that -- you know, and if you want to
16 put on it a waiver of your own that says, well, that's
17 what we said then, but it's not what we say now, that
18 would be fine, too. But it would be helpful for us to
19 see what that response was.

20 MS. COOK: Okay.

21 MR. BURTON: I think it would be helpful to
22 us in planning for a meeting of this subcommittee to
23 get a little better sense of some of the problems you
24 anticipate of dealing with the situations where we
25 don't have a current contractor and so on, and part of

1 the same set of responses here, there's several
2 mentions, several places in here where there's a
3 comment pertaining to insurance companies and more
4 particular difficulties of dealing with insurance
5 companies or with state funds, and I'm not clear in my
6 own mind as to whether those problems that you're
7 referring to here are ones associated with the lack of,
8 let's say, a DOE commitment to pay and whether there's
9 some other problems around.

10 Now, for example, if you -- let's just go to
11 what I'll call the Martinez model that we talked about
12 yesterday, which is, that there's DOE's commitment to
13 pay for everybody, not just the current contractors,
14 but -- and then a TPA is put into place to handle these
15 cases for when there's no longer a contractor and all
16 the other subsets of the difficult cases.

17 Are there problems that you still envision
18 with -- under those circumstances involving private
19 carriers and state funds and so on? Because if there
20 are, then we need to start thinking about those from
21 our committee standpoint, or is this concern here
22 strictly driven by the fact that you don't see that
23 model of the DOE TPA available?

24 MS. COOK: I think when those responses were
25 written, it was sort of, you know, not looking at that

1 model but just teeing up that there's a whole wide
2 range which Emily sort of eloquently kind of ticked off
3 yesterday, just off the top of her head, but it is -- I
4 guess I would like to frame it differently, and it's
5 not a DOE commitment to pay but it's a DOE mechanism to
6 pay, you know. How do we get to a DOE mechanism to
7 pay, and then, you know, what requires legislation,
8 what requires -- there's a whole range of stuff.

9 I think that probably what needs to happen in
10 setting up this meeting and going into this meeting is
11 laying out that full matrix of all of the possible ways
12 we can screw this up, to put it bluntly. All of the
13 things that could get in the way of fulfilling that
14 commitment to pay. There are so many things that we
15 don't have a mechanism for that we've got to just sort
16 that through, and then I think that it's time to talk
17 to insurance carriers and the state funds and all of
18 that to figure out if there is any way to sort through
19 that or if there's something that just has to
20 drastically be done differently, and the whole rolling
21 into state workers comp blindly without any other
22 mechanism around that may not work.

23 MR. BURTON: I guess my reaction is that the
24 kind of things I envision as being a problem involving
25 the private insurance carriers and state funds and so

1 on, most of them would be dealt with or solved by this
2 model of you committing yourself to reimburse and
3 having a TPA to handle things, and now that obviously
4 may or may not occur, but it seems to me that's one
5 model that we could perhaps get reactions from
6 contractors and insurers on, but the other model is the
7 one that I think originally motivated this discussion
8 was the notion that in fact you weren't going to be
9 reimbursing in some unitary way like that, and then I
10 think -- so, I guess we really need to get sorted out
11 as background from what our committee can be helpful on
12 as to where we're going to be. Obviously some of this
13 may get resolved quickly in Congress.

14 MS. COOK: Well, in laying out that matrix
15 that says what are all the possibilities here, but
16 then, also, also identifying -- I mean, it is an
17 appropriations issue, you know. I mean, Congress would
18 have to appropriate funds for us to do that, and we
19 have to very clearly identify that, so that those
20 things can happen. Again, we can lay out a mechanism -
21 - this happens to us a lot -- given direction to do
22 something that we actually don't get money to do, but
23 we were told to do it anyway. That's not a good
24 situation to be in either. So, we've gotta make sure
25 that we really tee up where the issues are and who has

1 responsibility to take action to resolve that issue.

2 So, I think that this -- I think that meeting
3 with the carriers and all and seeing whether it's even
4 acceptable to them, if we said we would reimburse you
5 if you go ahead and do this, is that acceptable to
6 them? It goes back to my comment yesterday about some
7 of the state workers comp folks that I talked to just
8 in my prior jobs about setting a precedent in a state
9 that is outside of their normal procedures so that then
10 the people in their state think it is something that it
11 is not. So, you've almost got a de facto change in how
12 the state runs their business. I don't know whether
13 that would worry carriers or not. I don't know.
14 You're just going to have to ask them, I think.

15 MS. SPIELER: I have actually a question that
16 I found this a little confusing, and I'm not sure if
17 other committee members may have as well.

18 I was thinking that if there was essential
19 payer and it was handled through a TPA, it would just
20 simply be taken out of the insurer's hands as opposed
21 to a reimbursement, you know, methodology with the
22 various different carriers and different state funds
23 and how do we set up reimbursement? I was thinking you
24 would essentially be saying if there -- assuming there
25 were a pot of money allocated, that we are essentially

1 self-insuring for these claims, you don't have to worry
2 about them.

3 MS. COOK: Does that take it out of state
4 workers comp then?

5 MS. SPIELER: No. It simply takes it out of
6 the third party payer's role but not out of the state
7 comp system. It's a very different model. Essentially
8 what you're -- say Travelers insures an employer in a
9 state. The employer says we have a contract with you,
10 but we're actually excluding from our contract this
11 particular set of claims that we're going to self-
12 insure for. We're going to handle those through the
13 state system, but we're going to pay them directly.
14 You don't have to worry about them. Travelers doesn't
15 have to worry about them. The state of whatever still
16 has to handle them in whatever way is arranged, but
17 essentially you do it through a different -- through a
18 TPA as opposed to the other carrier.

19 MR. BURTON: Well, maybe there's an overlap
20 between the committee that on the permanent partial
21 disability thing because let me just say, supposing we
22 have an employee who currently is with the carrier on
23 this particular claim, and now we've gotten an okay
24 from the physicians panel on permanent partial
25 disability. Does the TPA have sole authority of that

1 or are you asking for an input from the employer
2 carrier side, and it seems to me that even if the issue
3 of causation is resolved, there still may be
4 information. I don't know.

5 MS. SPIELER: I don't know, but I actually
6 thought that Len's model was to take it out of the
7 employer insurer side and to simply transfer it to --
8 as if this new TPA is standing in the place of the
9 insurer employer and is now functioning for the
10 contractor/DOE as a non-risk-bearing TPA. That -- I
11 clearly -- we're probably -- now you've got that look
12 on your face, Bev, but that was -- I mean, maybe this
13 is a conversation that the subcommittee should have in
14 an on-going manner about what's the most efficient way
15 to do this because clearly we each came out of those
16 conversations with a slightly different model in our
17 head which is kind of interesting but not too helpful
18 to DOE.

19 MS. COOK: None of these are simple. I think
20 that's probably the key to all of it, and, you know, a
21 third party trying to figure out partial permanent
22 disability, I don't know how that's even going -- I
23 mean, there's just so many complications. We could get
24 totally sidetracked on this at this point, and I think
25 going to the subcommittee would be helpful.

1 MS. SPIELER: Don?

2 MR. ELISBURG: I think it's important to keep
3 remembering what we're trying to work through here are
4 mechanisms. Some of them are polite fictions, some of
5 them are substitutions. The fact of the matter is that
6 the Congress said to the Department of Energy,
7 determine that this is a valid claim against the DOE
8 and then figure out how to get it paid through this
9 system.

10 So, you're looking at different mechanisms to
11 deal with live contractors, dead contractors, different
12 kinds of arrangements, but really they're all vehicles
13 to make a payment as opposed to serious contractual
14 relationships dealing with the underlying claim. It's
15 really the question of how do you process this along
16 through various entities that you may create or exist
17 in order to handle that process?

18 MS. SPIELER: Hopefully with the goal of
19 efficiency and simplicity as components.

20 Len?

21 MR. MARTINEZ: To answer your question, my
22 vision was just what you described, and that is, there
23 is no involvement by the state workers comp
24 organizations, other than using their normal
25 determination process of partial or full, and that the

1 TPA would act as a non-risk-bearing, make the payment
2 and it's done. The fewer people -- fewer organizations
3 you involve in this, the less the complexity. That was
4 my euphoric approach.

5 MS. SPIELER: Okay. Again, I think -- there
6 is -- this is -- and this goes back, I think, to the
7 conversation that we had some months ago, Bev, about
8 the level of expertise on this committee with regard to
9 the sort of pragmatic processing issues, and I think
10 that that is expertise that's probably, with the
11 exception of Kate, really kind of lacking in your
12 department, but really there are a lot of people on
13 this committee with expertise in thinking about that,
14 and it seems very clear to me that through our
15 subcommittee structure, that we should get down and
16 dirty here and that hopefully over the summer, there
17 will be meetings of these subcommittees, both
18 telephonically and in person, and with staff to try to
19 move forward these issues that we're identifying here,
20 and to the extent that they need the full committee's
21 discussion, ratification, or whatever, that it will be
22 brought back to the full committee, but that you will
23 work closely with the subcommittees in trying to reach
24 solutions to difficult problems in the coming months.

25 MS. COOK: I see my role in all of this and

1 my office's role in all of this is we get to be the
2 ones that walk in and give you but what about this and
3 then watch you all oscillate, you know. That's our
4 part of it, is really understanding the practical --
5 what the claims are really going to look like and who
6 the people are and what the situations are and all
7 that. So, trying to fit all of those variations into a
8 structure and having you help us figure out what that
9 structure is that it might work for everything. I
10 think it's got to be a very intimate collaborative
11 effort to get that from here, and it's not going to be
12 easy.

13 MS. SPIELER: Let me just take a moment out
14 of our discussions to ask if there's anybody here who
15 would like to offer public comment as we've now sort of
16 entered into the period on the agenda when there was a
17 public comment period. Anyone?

18 (No response)

19 Path Forward/Next Meeting

20 MS. SPIELER: Okay. If not, I'm going to
21 take us back to the agenda and let me see if I can sum
22 up where I think we are and we can discuss how to
23 proceed.

24 The subcommittee that deals specifically with
25 claims processing and administration and how to do

1 these claims through OWA is going to start meeting with
2 Claudia immediately after this meeting and then
3 continue to work with that office on trying to help
4 figure out how to simplify and make this process work
5 in the most efficient way possible, and again, as I
6 said before, I'm assuming that the subcommittee will
7 then proceed to continue to do that work over the
8 coming period.

9 Similarly, the Performance Evaluation
10 Subcommittee will work -- will start working with
11 Claudia and start thinking about performance matrices
12 that would be appropriate to put in place as soon as
13 possible, so data is collected from the get-go as
14 opposed to having to go back in an evaluative mode and
15 discover that the data has not been properly collected.

16 We will be setting up a new subcommittee to
17 try to look at the claims issues post-physician --
18 after a positive physician panel decision is made in
19 particular with regard to permanent partial disability
20 and medical treatment issues but any other issues that
21 this subcommittee may come up with and John, at least
22 on an interim basis, will be chairing that
23 subcommittee, and we will be requesting that the
24 committee members over the next week indicate interest
25 in participation in that subcommittee, and John and I

1 will consult about how to proceed after the
2 subcommittee is established.

3 It probably makes the most sense on this
4 contractor-insurer discussion to see over the next week
5 or two weeks what the outcome is of congressional
6 action with regard to payment availability for
7 currently what we're characterizing as non-payer claims
8 and then again, I think John will work with Kate on
9 figuring out how to proceed with the Contractor-Insurer
10 Subcommittee.

11 I'd like to remind staff that there were
12 several people who were asked to participate on that
13 subcommittee who are not members of the full committee,
14 and that it's important that they be involved in this
15 process. We had sought representation from insurance
16 carrier expertise that we didn't have on this
17 committee, and in addition, subcommittees, and again I
18 think this is done usually in consultation with the
19 chair and staff, subcommittees can add to their members
20 in terms of adding people with expertise around a
21 particular issue, even without people having to go
22 through the appointment process for the full committee,
23 and so subcommittee chairs should consider doing that,
24 and I would be happy to talk to staff about how to
25 proceed if people feel that that's important.

1 After the physician panel rule is out, I
2 think it would make sense, Kate, to convene a meeting
3 of the State Agency Relations Subcommittee
4 telephonically to discuss where you are and how that's
5 going to proceed.

6 I've also asked Judy to, because of several
7 people's movements in their day jobs, not mine so much
8 but in particular because Vicky's working for Bechtel
9 and Iris is no longer a state agency representative, I
10 think it's important that we be rebriefed on ethical
11 guidelines with regard to disclosure and voting, and I
12 actually don't remember that stuff, couldn't do it
13 myself, and I think it would be important to have that
14 done.

15 I think that the physicians who are on the
16 Medical Panel Subcommittee who could contribute
17 substantially to how do we figure out about this PPD
18 conundrum should please volunteer to be members of the
19 subcommittee that's going to be struggling with that
20 issue. I think it's a quite difficult one.

21 Are there other matters, Bev, that you would
22 like our assistance on that we haven't considered?

23 MS. COOK: Just one comment, that I think you
24 instigated yesterday. Yeah. And that is, this is very
25 complicated, and it's very easy to slip into studying

1 these things forever and getting to the perfect answer
2 for each of these things before we move forward, and so
3 I would just encourage everyone that, you know, a goal
4 is to get up and running and we can make course changes
5 and adjustments as we move, and if things -- as we
6 learn things, but expediting pathways to move forward
7 is in my mind critically important.

8 MR. WAGNER: Two things. One, in terms of
9 the comprehensive list, I think that some of the issues
10 that were raised early on had to do with communications
11 back to claimants, and I just wanted to make sure that
12 at least the subcommittee that's looking at process
13 takes a careful look at communication letters both for
14 their understandability, their efficiency, their
15 effectiveness, etc.

16 The other thing is a more general comment
17 actually, responding in part to the issue that Bev just
18 raised. Clearly, we as a committee are committed to be
19 helpful, collaborative, consultative, and advisory.
20 This is a program that the Department owns, the
21 Department is responsible for and accountable for to
22 Congress, the citizens of the country, the DOE workers,
23 the world.

24 We're here to assist but the monkey is
25 clearly on your back. No offer of assistance should be

1 taken as a reason to delay the necessary forward
2 movement that you're currently engaged in, and I think
3 that you've heard a number of times the people on the
4 committee are interested in, you know, seeing things in
5 draft form, being able to contribute, advise, provide
6 the best information that we can, but the reality is
7 that you've got to move, you know it, and what I would
8 hate to see what happen, you know, the next time we get
9 together is anybody saying, well, we would have been
10 this much farther ahead but for the fact that we were
11 waiting for, you know, some subcommittee of busy people
12 to be able to get together and provide this advice.
13 You get it.

14 MR. BLEA: Because of my airline flight, I
15 have to get going, but I want to say that I appreciate
16 you being here and your comments and what you've had to
17 say.

18 I felt it was very productive for myself. It
19 led me a lot to what you're thinking, what the DOE's
20 thinking, and I think we have a good match here. I
21 mean, I think we can move forward with each other's
22 help, and again sorry I have to leave, but whatever you
23 decide for the next meeting, the date, I guess I'll
24 have to live with it, you know.

25 MS. SPIELER: I was actually going to suggest

1 that these subcommittees proceed with their work
2 expeditiously and with staff as is appropriate. To the
3 extent that I'm either on a subcommittee or you think
4 it appropriate, please keep me informed. I can still
5 be a central clearinghouse, although I'm going to be
6 packing boxes over the next six weeks, and so it's
7 going to be challenging for me to keep track.

8 I will draft the letter that Len has
9 suggested be drafted, and I will be circulating it to
10 everyone. I would suggest that we look probably toward
11 October for another committee meeting, and if that
12 makes sense to staff, and that we poll people on their
13 date availability, and as we move forward, make a
14 determination as to whether it makes sense to convene
15 the full committee at that point or whether working in
16 subcommittees makes more sense, and whether we need to
17 all be in on place at one time for subcommittee work or
18 whether it makes -- we can just have separate meetings.

19 I'm willing to go with the flow, but I think
20 we should try to determine a date and then hold it
21 which is cancelable as opposed to on the first of
22 October try to find a date in which case we'll be
23 meeting in January, and so that would be my suggestion
24 about how we proceed in terms of committee meetings.

25 Does that make sense to the members?

1 MS. COOK: That would be helpful to me
2 because, frankly, what I would like to be able to do in
3 the next meeting, that we'll know how many difficulties
4 we really have probably, things we never anticipated,
5 but I would like to try at the next meeting to have at
6 least the Secretary at least stop by and meet you all.

7 MS. SPIELER: That would be great.

8 Let me say that I am encouraged by both the
9 work that OWA staff is doing and the new office that
10 Claudia's heading as well as the permanent staff that
11 we've met with before. We really appreciate the staff
12 work that's done for the committee and clearly
13 appreciate, Bev, your willingness to spend all this
14 time with us this time.

15 I may be actually asking because of my own
16 schedule and particularly in view of the fact that the
17 West Coast people seem to be having a hard time getting
18 here anyway, that we go to a one-day meeting format
19 instead of two half-days. It will be difficult for me
20 in my new job to commit two days plus subcommittee time
21 to this, and so I -- but again, we'll poll the
22 committee on that.

23 Judy, thank you a lot for the staff work that
24 you've been doing for this committee.

25 We really do want this program to work, and

1 we do understand that this is an incredibly complex
2 problem for DOE, both in terms of the historical roles
3 that you've played which put you in, I think, a
4 difficult position in terms of your relationship with
5 some of these workers and the comp process in general,
6 and also the incredible complexity of how do we deal
7 with all these different state agencies.

8 I think it would be helpful, and I'm sure the
9 Performance Evaluation Committee is going to raise
10 this, if we knew more about what those 11,000 claims
11 were that are out there, what jurisdictions are they
12 in, what kinds of diseases are they raising, are they
13 classifiable or are they like non-classifiable? You
14 know, something more about the universe that you see
15 already in your pot, and to the extent that you develop
16 that information before we meet as a full committee
17 again, I think it would be useful for you to send it
18 out to committee members because I think it may very
19 well trigger useful thinking for you on how to think
20 about setting priorities and moving forward rapidly.

21 But I certainly second Greg's feeling that
22 you should never feel that because the committee hasn't
23 responded, that you can't move forward. Obviously
24 there will be times when committee members will say how
25 could you possibly have done that, but you -- that's

1 life as we know it, and I regard that as a healthy give
2 and take process and not one that's intended to be, you
3 know, adversarial to the Department at all.

4 Are there other issues and concerns that
5 committee members have that you'd like to discuss?

6 (No response)

7 MS. SPIELER: Jeanne, anything?

8 (No response)

9 MS. SPIELER: Okay. Don and Jeanne and
10 Vicky, you're going to go over with Claudia and take a
11 look at the claims systems now.

12 I would entertain a motion to adjourn then.

13 (Motion To Adjourn)

14 MS. SPIELER: Okay. Any opposition?

15 (No response)

16 MS. SPIELER: No? Then this meeting of the
17 Workers Advocacy Advisory Committee is adjourned, and
18 you will be hearing from me and from staff with regard
19 to -- and from subcommittee chairs with regard to
20 future meetings and communications.

21 Thank you very much, all of you.

22 (Whereupon, the meeting was adjourned.)

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